



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

HL 4AB4 0

EX
135
235
917



HARVARD LAW LIBRARY

Received APR 4 1923

Texas. laws, statutes, etc. Tax law

ANNOTATED
TAX LAWS⁴
OF
TEXAS

INCLUDING ALL CONSTITUTIONAL
AND STATUTORY PROVISIONS
DOWN TO 1917.



S
45/7E
373
F17

COMPILED AND PUBLISHED
BY THE
STANDARD TRUST CO.,
LEGAL DEPARTMENT
LITTLEFIELD BUILDING,
AUSTIN, TEXAS

Tex
135
T235
917

COPYRIGHTED BY
STANDARD TRUST CO.
AUSTIN, TEXAS
1917

APR 4 1923.

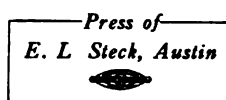


TABLE OF CONTENTS

CHAPTER ONE—CONSTITUTIONAL PROVISIONS.

	Sec.
All Taxes to Be Equal and Uniform—Different Kinds of Taxes—Exemptions and Limitations.....	1
Occupation Taxes Shall be Equal and Uniform—Certain Exemptions....	2
Taxes Shall be Levied by General Law for Public Purposes.....	3
Power to Tax Corporations.....	4
Railroad Property Subject to City Taxes.....	5
Method of Making Appropriations.....	6
Appropriations Not to be Diverted.....	7
Method of Assessing Railroad Property and Where.....	8
Limitations on Rate of Taxation.....	9
Taxes Not to be Released Except When.....	10
To be Assessed in County Except When.....	11
Property in Unorganized Counties.....	12
Redemption from Tax Sales by Owners.....	13
Providing for Election of Assessors.....	14
Creating Lien for Taxes on Property.....	15
Sheriff to Be Collector in Certain Instances.....	16
Legislature May Tax Other Objects.....	17
Duty of Legislature to Equalize Taxes.....	18
Limitations Upon Power of Legislature to Levy Taxes.....	19
Power of Legislature to Levy State Advalorem Tax for Benefit of Indigent Confederate Soldiers.....	20
Legislature not to Grant Certain Powers to Cities and Counties.....	21
Cities and Towns to Be Chartered by General Law, Etc.....	22
Home Rule Amendment for Cities of Five Thousand and Over.....	23
Assessment and Collection of Taxes in Counties, Cities and Towns.....	24
Providing for Seawall Taxes—Eminent Domain Granted.....	25
Legislative Donations for Construction of Seawalls.....	26
Certain Property to be Exempt from Taxation.....	27
Special Taxes to be Levied for School Purposes, When.....	28

CHAPTER TWO—METHOD OF ASCERTAINING RATE OF TAXATION.

(From Chap. 1, Title 126, R. S.)

Automatic Tax Board to Calculate Tax Rate—How Constituted.....	29
Duty of Tax Assessor to Make Certificate to Comptroller.....	30
Method to Be Followed by Board in Arriving at Tax Rate.....	31
Duty of Comptroller to Certify Tax Rate to County Assessors.....	32
Duty of Commissioners' Court to Calculate the County Tax Rate, When	33
Poll Tax to Be Levied and Collected Annually.....	34

CHAPTER THREE—OCCUPATIONS SUBJECT TO BE TAXED.

(From Cap. 1, Title 126, R. S.)

	SEC.
Occupation Taxes to Be Levied and Collected.....	35
From Itinerant Merchants.....	36
From Traveling Vendors of Patent or Other Medicines.....	37
Tax on Auctioneers.....	38
From Ship Brokers or Ship Agents.....	39
From Persons Who Sell on Commission.....	40
From Itinerant Physicians, Occulists, Etc.....	41
From Persons Keeping Shooting Gallery.....	42
From Every Billiard or Pool Table Used for Profit—Defining Same.....	43
From Nine and Ten Pin Alleys Used for Profit—Definition.....	44
From Flying Jenny or Merry-Go-Rounds.....	45
From Every Foot or Other Peddler.....	46
From Peddlers of Clocks, Farm Implements, Stoves, Etc.....	47
From Theaters and Dramatic Representations—Exceptions.....	48
From Every Circus—Defining Same.....	49
From Menageries or Side Shows.....	50
From Acrobatic Exhibitions.....	51
From Slight of Hand Exhibitions.....	52
From Waxworks, Etc., Charging Fee—Exemptions.....	53
From Concerts Where Fee Charged—Exceptions.....	54
From Insurance Adjusters, Agents.....	55
From Lightning Rod Agents or Dealers.....	56
From Cotton Brokers, Factors and Commission Merchants.....	57
From Pawnbrokers.....	58
From Sewing Machine Agents and Dealers.....	59
From Gas Manufacturers.....	60
From Electric Light Companies.....	61
From Waterworks Companies.....	62
From Certain Money Lenders.....	63
From Credit Associations or Reporting Agencies.....	64
From Owners of Skating Rinks.....	65
From Managers of Ball Parks.....	66
From Wholesale Dealers in Ice.....	67
From Owners or Managers of Race Tracks.....	68
From Every Street Car Company.....	69
From Owners of Phonographic Exhibitions Charging Fee—Exceptions.....	70
From Owners of Motion Picture Machines.....	71
From Stereoscopic Shows.....	72
From Owners or Managers of Medicine Shows—Exceptions.....	73
From Brokers or Commission Merchants—Intent of Act.....	74
From Dealers in Cigarettes—What is Cigarette.....	75
From Dealers in Cannon Crackers or Toy Pistols.....	76
Defining "Loan Brokers".....	77
Loan Broker Shall Give Bond.....	78
Bond to Be Filed and Recorded.....	79
Bond Required for Each Place of Business.....	80
Shall Keep Record of All Loans Made.....	81
Loan Records to Be Opened for Inspection.....	82
Loan Brokers Shall File Power of Attorney to County Judge.....	83

TABLE OF CONTENTS

v

CHAPTER THREE (Cont'd.)

SEC.

Unpaid Judgment on Bond—Unlawful to Continue Business.....	84
Judgment to Be Collected Out of Bond.....	85
Failure to Comply With Law—Punishment.....	86
Mortgages, How Executed.....	87
Annual Tax on Loan Brokers.....	88
Compromises for Usury Are Void.....	88a

CHAPTER FOUR—METHOD OF COLLECTING OCCUPATION TAXES—POWER OF COMMISSIONERS' COURT AND CERTAIN OFFICERS.

(From Chapter 1, Title 126, R. S.)

Power of Commissioners' Court to Levy Taxes for Certain County Purposes	89
All Taxes Payable in Currency or Coin of United States—Exceptions....	90
Collector of Taxes to Keep Book for Certain Purposes.....	91
Comptroller to Furnish Tax Collector Certain Books, Etc.	92
Occupation Taxes to Be Paid Before Business Begins.....	93
Comptroller to Furnish Occupation Tax Receipts to Collectors.....	94
Account of Receipts to Be Furnished Commissioners.....	95
May Transfer License on Books.....	96
Purchaser of Unexpired License May pursue Occupation, When, Etc....	97
Governor May Appoint State Revenue Agent—Duties of His Office.....	98
State Revenue Agent Shall Have Access to Books.....	99
Salary of State Revenue Agent.....	100

CHAPTER FIVE—OCCUPATION TAXES BASED UPON GROSS RECEIPTS.

(From Chapter 2, Title 126, R. S.)

Express Companies to File Annual Reports Showing Gross Receipts....	101
Telegraph Companies to Report Quarterly—Amount of Tax.....	102
Gas, Electric Light Power and Waterworks Companies to Report Each Quarter	103
Collecting and Commercial Agencies to Report Quarterly—Must Pay Tax	104
Stock Refrigerator and Other Car Companies Taxed.....	105
Pipe Lines Taxed—To Make Reports Each Quarter—How Determined....	106
Pipe Line Expert for Railroad Commission—Additional Taxes.....	107
Sleeping Palace and Dining Car Companies Taxed.....	108
Fire, Marine, Life and Other Insurance Companies.....	109
Wholesale Oil Dealers—Definition of Same.....	110
Interurban and Electric Railway Companies Taxed—How Ascertained....	111
Wholesale Dealers in or Distributers of Liquors—"Wholesale Dealer Defined"	112
Wholesale or Retail Dealers in Pistols Taxed.....	113
Text Book and Law Book Publishers Subject to Tax.....	114
Telephone Companies Subject to Tax—Report Quarterly.....	115
Oil Well Owners, Lessees and Companies Taxed.....	116
Terminal Railroad Companies and Owners of Same.....	117
Tax to Be Paid When Business is Begun After Beginning of Quarter....	118
Penalty for Failure to Make Report in Thirty Days.....	119

TABLE OF CONTENTS

CHAPTER FIVE (Cont'd.)		Sec.
Penalty for Failure to Pay Tax.....		120
Penalties May Be Removed by Attorney General.....		121
Permit Not to Be Granted Until Tax is Paid.....		122
These Taxes in Addition to All Other Taxes.....		123
State Comptroller May Require Additional Reports.....		124
State Revenue Agent to Have Access to and Examine Books, When.....		125

CHAPTER SIX—FRANCHISE TAXES OF CORPORATIONS—PROCEEDINGS FOR FAILURE TO PAY.

(From Chapter 3, Title 126, R. S.)

Amount of Franchise Tax to Be Paid by Domestic Corporations.....	126
Amount of Franchise Tax to Be Paid by Foreign Corporations—How Computed	127
Part of Annual Tax to Be Paid in Certain Instances.....	128
Officers May Be Required to Make Affidavit to Facts.....	129
How Amount of Franchise Tax Due May Be Determined.....	130
Certain Reports to Be Filed as Basis of Amount of Tax Due.....	131
Corporations Subject to Fine as Penalty.....	132
Such Reports to Be Treated as Privileged.....	133
May Be Made by What Officers; How Executed, Etc.....	134
Laws in Conflict Are Repealed.....	135
Increase in Capital Stock—Supplemental Tax to Be Paid.....	136
Charter May Be Forfeited for Failure to Pay Tax.....	137
Duty of Secretary of State to Give Notice Before Forfeiture.....	138
Cancellation or Forfeiture in Certain Cases; Forfeiture by Judgment, When, Etc.....	139
Foreign Corporations May Surrender Permit and Withdraw from State..	140
Penalty for Corporation Continuing Business After Forfeiture of Charter	141
Gross Receipts Tax Payers Exempt from Paying for Franchise.....	142
Duty of Attorney General to Bring Suit.....	143
Duty of District Clerk When Charter is Forfeited.....	144
Payment of Tax by Corporations in Process of Liquidation.....	145

CHAPTER SEVEN—TAXES ON INTANGIBLE ASSETS—DUTIES OF STATE TAX BOARD AND COMMISSIONER.

(From Chapter 4, Title 126, R. S.)

Creation of State Tax Board and Appointment of Tax Commissioner.....	146
Tax Commissioner to Execute Bond.....	147
Secretary of Board May Be Employed.....	148
Duties of State Tax Board Defined.....	149
Board or Member to Visit Counties.....	150
Powers of Members of Board to Administer Oaths, Etc.....	151
Penalty for Failure to Obey Subpoena of Board.....	152
Taxes on Intangible Assets of Certain Corporations.....	153
Such Corporations or Persons to Furnish Statements.....	154
What Statements in Sec. 154 Shall Contain.....	155
Date of Receipt to Be Endorsed on Statement; Board May Demand Additional Statements.....	156
Statements to Be Placed Before Board, When.....	157

TABLE OF CONTENTS

vii

CHAPTER SEVEN (Cont'd.)

Sec.

Duties and Powers of Board in Passing Upon Statement.....	158
Method of Arriving at Intangible Values of Properties.....	159
Unincorporated Companies and Individuals; Capital, How Ascertained....	160
Board to Certify Amount of Intangible Assets to County Assessors.....	161
Failure of Tax Assessor to Comply; Penalty.....	162
Failure to Make Statement, Etc.; Penalty.....	163
Receivers and Trustees in Bankruptcy to Make Reports, Etc.....	164
Persons Complying With This Chapter Relieved of Other Taxes.....	165

CHAPTER EIGHT—TAXES ON LIQUOR DEALERS—REGULATIONS OF DEALERS AND FORFEITURE OF LICENSE IN CERTAIN INSTANCES.

(From Chapter 5, Title 126, R. S.)

Amount of Tax to Be Collected from Liquor Dealers.....	166
Definition of a "Retail Liquor Dealer".....	167
Definition of a "Retail Malt Dealer".....	168
No Person Shall Sell Liquor Without License.....	169
Malt Liquor Not to Be Sold Without License.....	170
Wine Growers Exempted—Regulations.....	171
Shall Not Carry on Business at More Than One Place—Transfer.....	172
License to Be Forfeited for Violation of Law.....	173
Application for Permit—What it Shall Contain.....	174
Comptroller Given Power to Revoke License.....	175
How Proceedings to Revoke Shall Be Instituted.....	176
Duty of Officer Taking Depositions.....	177
Failure of Witness to Appear—Procedure.....	178
Failure of County Attorney to Appear—Procedure.....	179
Other Witnesses to Be Summoned, When.....	180
Duty of Comptroller on Receipt of Depositions.....	181
Right of Appeal to the District Court.....	182
Fees to Be Paid Officers for Taking Testimony.....	183
Number of Permits or Licenses to Be Issued—How Determined.....	184
Petition for License—Requisites of.....	185
License Not to Be Granted for Business Within Three Hundred Feet of a Church	186
Duty of County Judge to Act on Petition.....	187
Clerk to Furnish Certified Copy of Judgment.....	188
Duty of Clerk to Issue License, When.....	189
Regulating Hours of Closing, Etc.....	190
Requisites of Bond of Liquor Dealers.....	191
Unearned Portion of License Returned in Case of Death.....	192
Duty of Clerk to Make Out Statement.....	193
Duty of Clerk to Certify Forfeitures, Etc.....	194
Act of Servant Deemed to Be Act of Master.....	195
No License Issued to Person Whose License Has Been Revoked Until Five Years	196
License Not to Be Granted to Certain Persons.....	197
Law Not to Conflict With Local Option Law.....	198
License to Be Posted.....	199
List of License to Be Delivered to Grand Jury.....	200

CHAPTER EIGHT (Cont'd.)		Sec.
District Judge to Charge Law to Grand Jury.....		201
Fees of Certain Officers.....		202
In Case of Forfeiture, May Dispose of Stock in Bulk.....		203
"Intoxicating Liquor" Defined.....		204
Law to Be Valid, Even Though Part is Held to Be Invalid.....		205

CHAPTER NINE—TAXES LEVIED ON SALE OF INTOXICATING LIQUORS IN LOCAL OPTION TERRITORY.

(From Chapter 6, Title 126, R. S.)

Tax on Selling Intoxicating Liquors on Prescription in Local Option Territory	206
Commissioners' Court May Levy License Tax in Addition.....	207
Prerequisites to the Issue of License to Sell in Dry Territory.....	208
License to Issue, When—Evidence of.....	209
License to Issue for One Year, and Shall Designate Place of Sale, Etc.....	210
License Required to Be Posted.....	211
County Clerk to Report Applications for License to State Revenue Agent.....	212
Producers of Domestic Wines exempt.....	213
Dealer Must Give Bond Before License Will Issue.....	214

CHAPTER TEN—TAX ON DEALERS IN NON-INTOXICATING MALT LIQUORS, COLD STORAGE AND C. O. D. SHIPMENTS.

(From Chapter 7, 8 and 9, Title 126, R. S.)

Tax on Dealers in Non-Intoxicating Malt Liquors.....	215
Application for License to Sell Non-Intoxicants to State What, Must Be Paid in Advance.....	216
County Clerk Required to Report License Issued.....	217
Tax on Persons Soliciting Orders or Operating Cold Storage in Dry Territory	218
Amount of Tax for Keeping Cold Storage.....	219
Application for License—Procedure Necessary.....	220
County Clerk to Report All Such Licenses Issued.....	221
Amount of Occupation Tax on Handling Liquors C. O. D.....	222
Penalty for Failure to Pay Tax Provided for by Law.....	223
No Person or Company Required to Maintain Such Office.....	224
Invalidity of Part of Law Not to Affect Whole of Same.....	225

CHAPTER ELEVEN—ON FAILURE TO PAY TAX PERSONS SELLING LIQUOR MAY BE ENJOINED—POWERS OF CITIES AND TOWNS.

(R. S., Arts. 4674 to 4688 and 830 to 832.)

Unlawful Sale, Etc., of Liquor May Be Enjoined.....	226
Procedure as in Other Cases.....	227
Persons Compelled to Testify.....	228
Cumulative Remedy	229
Sale of Intoxicating Liquors in Local Option Territory Enjoined.....	230
Who Made Party Defendant.....	231
By Whom Prosecuted.....	232

TABLE OF CONTENTS

ix

CHAPTER ELEVEN (Cont'd.)	Sec.
Same Proceedings as in Other Cases, Except.....	233
General Reputation Evidence.....	234
Injunction Against Soliciting Orders in Local Option Districts.....	235
Injunction Against Sale of Non-Intoxicating Liquor Without License.....	236
Use of Premises for Gaming Enjoined.....	237
Parties and Proceedings.....	238
Suits, by Whom Instituted.....	239
Procedure in Other Injunction Cases.....	240
Cities May Restrain, Etc., the Sale of Intoxicating Liquors for Evading Tax	241
Cities May Prevent Sale of Liquor in Certain Places.....	242
Cities May Close Drinking Houses, Etc., on Sunday.....	243

CHAPTER TWELVE—TAXES TO BE LEVIED ON PROPERTY INHERITED.

(R. S., Arts. 4674 and 830 to 832.)

Property Which May Be Inherited Subject to Taxation.....	244
Property Passing in Two or More Estates, Tax to Be Levied.....	245
Property Bequeathed to Executor or Trustee in Lieu of Commission Taxed, When	246
Inventory of Property Inherited to Be Filed, When; Penalty.....	247
Duty of Comptroller to Contract for Collection.....	248
Appraisers Appointed; Notice to Be Given, Etc.....	249
County Judge to Regulate Inheritance Tax.....	250
Property Withheld from Beneficiaries Until Tax Paid.....	251
Tax Charged on Real Estate, When.....	252
Tax to Be Paid Within Thirty Days to Collector.....	253
Duty of Tax Collector to Sue for, When.....	254
Duty of Tax Collector to Pay to State Treasurer.....	255
Tax Deposited to Credit of General Fund.....	256
Tax May Be Refunded, When.....	257
Final Account Not to Be Allowed Until Tax is Paid.....	258
Appointment of Administrator Dispensed With.....	259

CHAPTER THIRTEEN—WHAT PROPERTY IS SUBJECT TO TAX- ATION AND THE METHOD OF RENDERING THE SAME.

(Chapter 11, Title 126, R. S.)

All Property, Real, Personal and Mixed, to Be Taxed.....	260
What Real Property, for Purposes of Taxation, Includes.....	261
What Personal Property, for Purposes of Taxation, Includes.....	262
Various Terms and Words Legally Defined.....	263
When Property to Be Rendered for Taxes.....	264
Manner of Rendering Property for Taxation.....	265
Where Property Shall be Rendered.....	266
To Be Rendered in but One County.....	267
Where Live Stock Shall Be Rendered, and How.....	268
Taxes Not to Be Paid Twice, Etc.....	269
Steamboats and Vessels—Where Listed.....	270
Railroads, Telegraphs, Etc.....	271
Persons Listing Property as Agents for Others.....	272

TABLE OF CONTENTS

CHAPTER THIRTEEN (Cont'd.)		SEC.
Each Person Shall List Under Oath.....		273
The Statement of Rendition and Its Requisites.....		274
Certain Credits and Stocks Not to Be Listed.....		275
Rendition of Real Estate for Taxation.....		276
Assessment of Personal Property by Rendition by Banker, Broker, Etc.....		277
Assessment of Real Estate by Banks.....		278
No Deductions on Account of Certain Indebtedness.....		279
Assessment of Property by Railroads.....		280
Railroads to Return Sworn Statements, When, Etc.....		281
Assessments and Collections of Corporate Property.....		282
Assessments of Property in Owner's Name.....		283
All Taxes a Lien Upon All Property Taxed.....		284
Leasehold Interests in Public Lands, How Rendered.....		285
How Property Shall Be Valued for Taxation.....		286
United States Paper Money Taxable.....		287
To Be Assessed as Money on Hand.....		288

CHAPTER FOURTEEN—MANNER OF ASSESSMENT OF TAXES—
ELECTION AND QUALIFICATION OF ASSESSOR—DUTIES.
(From Chapter 12, Title 126, R. S.)

Election and Term of Office of Assessor.....	289
Manner of Filling Vacancy in Office of Assessor.....	290
Oath and Bond of Assessor.....	291
Purview of Bond of Assessor.....	292
New Bond Shall Be Given, When.....	293
Shall Give Bond for County Taxes.....	294
Assessor May Appoint Deputies.....	295
Authority of Assessor's Deputies.....	296
Assessors empowered to Administer Oaths.....	297
Oath Administered to Tax Payers by Assessor.....	298
Where and How the Oath May Be Made.....	299
Penalty for Failure to Attest Oath, Etc.....	300
Any Evasion a Fraud Upon the Public Revenue.....	301
Shall Require All Tax Payers to Make Oath.....	302
When Assessments Shall Be Made.....	303
Irregular Assessments to Be Considered Valid.....	304
How to Serve Notice if Tax Payer is Absent.....	305
Procedure When Owner Refused to List.....	306
Duty of Assessor Upon Failure to Obtain Statement.....	307
Commissioner of General Land Office to Furnish Abstracts to Assessors....	308
Books to Be Furnished Assessors; How to Be Filled by Assessors.....	309
How Blanks Shall Be Filled by Assessor.....	310
Manner of Assessing Blocks and Lots in Cities.....	311
Duties of Assessor as to Assessments of lots and Blocks.....	312
Assessor's Abstract to Be Kept in Office.....	313
Lands Not on Abstract to Be Placed There.....	314
Shall Procure Certificate from Board of Equalization.....	315
Substitute to Be Employed if Assessor Fails.....	316
Comptroller to Carry Out Law in Unorganized Counties....	317
Manner and Form of Assessing Property for Taxes.....	318

TABLE OF CONTENTS

xi

CHAPTER FOURTEEN (Cont'd.)

	Sec.
Assessment of Property Not Rendered.....	319
Commissioners' Court to Sit as Board of Equalization.....	320
Assessment of Real Property for Previous Years.....	321
Assessment of Back Taxes on Personal Property; Supplemental Roll.....	323
Assessor to Follow Instructions.....	324
Assessment or Payment of Taxes May Be Proven, How.....	325
Equalization of Assessments—How Arrived at.....	326
Boards May Equalize Without Complaint.....	327
Penalty for Neglect of Duty by Assessor.....	328
Oath to Be Taken by Tax Assessor.....	329
Oath to Be Taken by Members of Board of Equalization.....	330
Neglect of Duty Cause for Removal from Office; Attorney General to File Suit	331
Assessor to Furnish List of Delinquents.....	332
Assessor to Submit Lists to Board of Equalization.....	333
Assessor Shall Make Out Rolls in Triplicate.....	334
Assessor Shall Also Make Out Rolls of Unrendered Property.....	335
Assessor's Duty to Add Up Columns.....	336
Return and Oath of the Tax Assessor.....	337
All Lists, Etc., Filed in County Clerk's Office.....	338
Rolls, How Distributed and Filed.....	339
Commissions and Compensation of Assessor.....	340
Compensation of Assessor.....	341
Compensation of Assessor, How Paid.....	342
Penalties for Neglect by Assessor of Duty.....	343
Lands of Non-Residents in Unorganized Counties; How Assessed.....	344
Lands in Unorganized Counties; How Assessed.....	345
Duties of Comptroller in Relation to Lands in Unorganized Counties.....	346
When Comptroller May Receive Such Assessments.....	347
Duty of Comptroller on Receipt of Rolls.....	348
How Owners Must Pay.....	349
Owners May Appeal from Comptroller's Assessment.....	350
Comptroller May Levy Upon and Sell, When.....	351
Sale of Lands by Comptroller.....	352
Lands May Be Bought by State, When.....	353
Redemption of Lands Sold by Comptroller.....	354
Tax Deed Made by Comptroller.....	355
List of Purchasers to Be Kept in Office of Comptroller.....	356
Deed of Comptroller Shall Vest Good Title, When.....	357
County Taxes to Be Paid, When.....	358
Comptroller to Keep Taxes of Unorganized Counties Until, When.....	359
Duty of Comptroller as to Money.....	360
Special Deposit to Be Made by Comptroller.....	361

CHAPTER FIFTEEN—METHOD OF COLLECTING TAXES, ELECTION AND QUALIFICATION OF THE COLLECTOR.

(From Chapter 13, Title 126, R. S.)

Election of Tax Collector and Term of Office.....	362
Vacancy in Office of Collector, How Filled.....	363
Sheriff to Be Collector in Certain Counties.....	364
Requisites of Bond and Oath of Tax Collector.....	365

CHAPTER FIFTEEN (Cont'd.)		SEC.
Shall Give New Bond in Certain Instances.....		366
Collector to Give Separate Bond for County Taxes.....		367
All Bonds to Be First Approved.....		368
Tax Collector May Appoint Deputies.....		369
Assessment Rolls to be a Warrant.....		370
Shall Be Collector of All Taxes.....		371
When the Collection of Taxes Shall Begin.....		372
Tax Collector Shall Keep Office at County Seat.....		373
Tax Receipt and its Requisites.....		374
The Receipts May Be Recorded in Clerk's Office.....		375
Duty of County Clerk to File and Record Tax Receipts, When.....		376
Fee of 25 Cents for Recording and Filing.....		377
Commissioners' Court to Furnish Record.....		378
Quarterly Reports; Requisites of; Duty of Collector.....		379
Duties of County Clerk and Collector of Taxes.....		380
Report of Tax Collector Not to Be Approved Unless.....		381
List of Delinquents and Insolvents to Be Made Out by Collector.....		382
Duty of Collector to Endeavor to Collect Delinquent List.....		383
Non-Residents May Pay Taxes to Comptroller, When.....		384
Forced Collections to Begin, When.....		385
Personal Property May Be Pointed Out to Collector.....		386
Duty of Collector When Property About to Be Removed from County....		387
Tax Lien Superior to Assignment, Attachment, Inheritance or De- vise, Except.....		388
Execution on Property in Other Counties Than That Where Tax is Due..		389
Tax Collector Not Allowed Credit for Delinquents, When.....		390
All Property Liable for Taxes.....		391
Sales of Property for Taxes, How Made.....		392
Duty of Collector if Property is Insufficient.....		393
Sales of Real Property, When Made.....		394
Advertisements of Real Property for Sale, Etc.....		395
Prior to Sale, List of Lands to Be Posted, How.....		396
Sales May Be Continued from Day to Day, When.....		397
Homesteads Are Liable Only for Their Own Taxes.....		398
Sales of Land for Delinquent Taxes, How Made.....		399
The Tax Deed of the Collector and Its Requisites.....		400
Sales by the Collector to Be Reported to Commissioners' Court.....		401
Redemption of Land Sold for Taxes by the Collector.....		402
Redemption Within Two Years, When.....		403
Redemption from Private Purchasers, How Made.....		404
Receipt of Collector, Notice When.....		405
Relief for Owners of Property, When.....		406
Method of Cancelling Taxes Where Mistake in Rendering Same.....		407
Duty of Collector to Issue Certificate of Redemption from Collec- tor, When		408
Duty of Collector to Bid in Lands for State, When.....		409
Owner or His Agent May Redeem, How.....		410
Shall Be Sold if Owner Fails to Redeem.....		411
Owners May Redeem by Paying Costs, Etc.....		412
Commissioners' Court to Sit as a Board of Inquiry in Cases of Double Payment		413

TABLE OF CONTENTS

xiii

CHAPTER FIFTEEN (Cont'd.)

Sec.

Duty of Tax Collector to File Complaint, When.....	414
Compensations and Commissions of Tax Collectors.....	415
Compensation of Tax Collector on Occupation Tax.....	416
Compensation of Tax Collector for One Levy Only, Etc.....	417
Taxes Upon Lands of Non-Residents in Unorganized Counties to Be Paid to Comptroller	418
To Account for Payment of Moneys.....	419
How Money Collected Shall Be Accounted for.....	420
How Notification to Pay May Be Made.....	421
Duty of District and County Attorneys to Sue for Taxes on Personal Property	422
Limitation Not Available to Delinquent Tax Payers.....	423

CHAPTER SIXTEEN—METHOD OF ASSESSMENT AND COLLECTION OF BACK TAXES ON UNRENDERED LANDS.

(From Chapter 14, Title 126, R. S.)

Assessment of Back Taxes on Unrendered Lands.....	424
Comptroller to Prepare List of Unrendered Lands Each Year.....	425
Comptroller to Forward List of Unrendered Lands to Boards of Equalization	426
The Board of Equalization to Value Such Lands.....	427
Duty of Board to Cause Three Rolls to Be Made.....	428
Duty of Collector to Give Notice or Advertise.....	429
Duty of Collector to Enforce Collections After Sixty Days.....	430
Duty of Comptroller to Make Out List of Lands Sold to State, Etc.....	431
Sale of Lands, When and How Made.....	432
Advertisement of Sale and Redemption of Lands by Owner.....	433
How Collector Shall Sell Lands.....	434
Sale May Be Continued by Tax Collector, How.....	435
Deed of Tax Collector Executed, When and How.....	436
When Collector Shall Execute Deed.....	437
Effect of Deed by Tax Collector.....	438
Collector Shall Make Report of Sales.....	439
Proceeds of Sale of Lands Paid to Whom.....	440
Collections Shall Be Applied, How.....	441
Costs Shall Be Deducted by Collector, Etc.....	442
Unsold Land to Be Reported to Comptroller.....	443

CHAPTER SEVENTEEN—DELINQUENT TAXES.

(From Chapter 15, 16, 17, and 18, Title 126, R. S.)

All Land and Improvements Subject to Taxation—What Real Property includes	444
Delinquent Taxes to Remain a Lien on Land.....	445
Duty of Commissioners' Court to Cause Lands Delinquent to Be Listed by Tax Collector.....	446
Delinquent Tax Lists to Be Recorded by County Clerks.....	447
Delinquent Tax List to Be Published in What Manner.....	448
Suits to Foreclose Tax Liens on Delinquent Lands.....	449
Proceedings in Suits to Foreclose Tax Lien.....	450

CHAPTER SEVENTEEN (Cont'd.)		SEC.
Duty of Sheriff to Execute Deeds to Purchasers.....		451
Attorneys to Represent State in Suits Against Delinquents.....		452
Duty of Assessor to List Unpaid Taxes Annually, Etc.....		453
Provisions of Law Available to Incorporated Cities and Towns.....		454
Lands Exempt from Provisions of This Chapter.....		455
Delinquent Owners May Redeem Lands Before Sale.....		456
Owners May Redeem in Two Years by Paying Double.....		457
Owners May Redeem from State, When and How.....		458
Proceedings Against Delinquents, Unknown or Non-Residents.....		459
Similar Proceedings May Be Instituted by City or Town.....		460
Lands to Be Platted and Numbered in Certain Counties.....		461
What Constitutes Evidence of Title to Redeem Land.....		462
Commissioners' Court May Order List Made of Property Omitted from Tax Rolls, Etc.....		463
Property Omitted Listed and to Be Assessed, How.....		464
Such List so Made to Operate a Lien on Property.....		465
Such Omitted Property to Be Advertised.....		466
Commissioners' Court Authorized and Empowered to Reduce assess- ments, When		467
Commissioners' Court May Contract for Collection of Delinquent Taxes, When		468
Bulk Assessments Validated, When.....		469
Delinquent Tax Record to Be Published, How.....		470
Property Listed by Comptroller, When.....		471
Duty of Assessor to Post Notice.....		472
Lands Not Rendered to Be Assessed, How.....		473
Duty of Commissioners' Court When Lists Are Made Up.....		474
Supplemental Tax Roll to Be Prepared by Tax Assessor.....		475
Fees to Which Assessor Shall Be Entitled.....		476
Of Municipal Taxes to Pay Subsidies in Aid of Railroads and Other In- ternal Improvements, Such Taxes How Applied.....		477
Such Taxes to Be Collected by City Officers.....		478
Bond of the Officer Collecting Such Taxes.....		479
Such Taxes May Be Paid in What.....		480
Such Taxes to Be Paid Over Every Month.....		481
If Insufficient, Additional Levy to Be Made.....		482
When New Counties Are Created, Etc.....		483
Transcripts of Unpaid Assessments.....		484
Transcripts to Be Verified.....		485
Compensation of Collector of New County.....		486
Compensation to Be Allowed for Transcribing Rolls.....		487
Duties of Tax Collector to Notify All Delinquents.....		488
How Notices and Statements Shall Be Made Out by Collector.....		489
Duty of County and District Attorneys to File Suits.....		490
Duties Are Mandatory on All Officers.....		491
Certain Laws Repealed.....		492

TABLE OF CONTENTS

xv

CHAPTER EIGHTEEN—COLLECTION OF POLL TAXES—WHO SUBJECT TO, AND HOW PAYMENT REGULATED. ✓

(From Chapter 4, Title 49, R. S.)

	Sec.
Constitutional Provisions—Qualifications for Voting; Who Qualified.....	493
Poll Tax Collected from Whom; When Paid; Receipt.....	494
Method of Paying Poll Tax.....	495
Method of Paying in Cities of Ten Thousand.....	496
Tax Receipt Not to Be Delivered to Agent, Etc.....	497
Candidate, Etc., Not to pay Poll Tax of Another; Provided, Etc.....	498
No One to Give Money to Another to Pay Poll Tax.....	499
No One to Keep Poll Tax of Another, Except.....	500
Poll Tax Receipt Shall Show What.....	501
Poll Tax Receipt, Form of.....	502
Poll Tax Receipt, Etc., in Case of Removal Ward or City Over 10,000.....	503
Poll Tax Receipt in Case of Removal to Another County or Precinct; Proviso	504
Exemption Certificate in Cities Over 10,000; Requisites, Etc.; Form.....	505
Minor Reaching Majority Between Feb. 1, and Election Day Certificate.....	506
Poll Tax in Unorganized Counties.....	507
Poll Tax Receipt, Etc., Books, Furnished by Commissioners to Collector; Requisites	508
Poll Tax Deputy to Be Appointed, Etc., in Certain Counties.....	509
Collector May Administer Oaths, Etc.....	510
Residence Proof of, When; False Statement Reported to Grand Jury.....	511
False swearing to Be Reported to Grand Jury.....	512
List of Poll Tax Payers, Etc., Furnished by Collector to Board, and by Board to Judges; Requisites.....	513
Poll Tax Receipts, Duplicates to Be Securely Kept, Etc.....	514
Poll Tax Receipts, Statement of, by Collector.....	515
Qualifications for Voting; Poll Tax in Cities of 10,000 and Over; Addi- tional Qualifications, Etc.....	516

CHAPTER NINETEEN—SPECIAL SCHOOL TAXES AND BOND ISSUES FOR SCHOOL PURPOSES. ✓

(From Provisions of Title 48, R. S.)

Powers of Commissioners' Courts to Levy Special Tax.....	517
Manner of Levying Special Tax.....	518
Levy of Bond Tax.....	519
Tax Must be Levied until Bonds are Paid.....	520
Power of School Trustees—May Issue Bonds.....	521
Election to be Ordered by Trustees, in What Manner.....	522
Public Notice of Election Shall be Given.....	523
Who May Vote in School Tax Elections.....	524
Powers and Duties of Assessor and Collector of District.....	525
Assessment and Collection of Special School Taxes by County Officers.....	526
School Trustees Authorized to Invest Sinking Funds.....	527
Refunding Bonds May be Issued.....	528
Second Election May Be Held to Reduce Tax, Etc.....	529

CHAPTER TWENTY—LEVY AND COLLECTION OF CITY SCHOOL TAXES.

(From Chapter 17, Title 48, R. S.)

	Sec.
Question of Local Maintenance Tax to be Submitted.....	530
Two-thirds Majority in Favor of Tax Necessary.....	531
Power of Council to Order Election for Local Tax.....	532
Duty of Council to Levy Tax, When.....	533
Manner of Levying Tax Annually.....	534
School Trustees Determine Annual Rate.....	535
Manner of Assessment and Collection.....	536
Funds to be Turned Over to School Treasurer.....	537
Extension of City Limits for School Purposes.....	538

CHAPTER TWENTY-ONE—TAXES RELATING TO LEVEES, IMPROVEMENT DISTRICTS AND SEAWALLS.

(From Chapters 2 and 3, Title 83, R. S.)

Power of Commissioners' Court to Establish Improvement Districts....	539
Improvement Districts May Control Levees, etc.....	540
Requisites of Petition to Establish District and Issue Bonds.....	541
Objection to Creation of District, How Made by any Person.....	542
Duty of Court on Hearing Petition.....	543
Commissioners' Court Shall Appoint an Engineer—Compensation.....	544
Engineer Shall Give Bond Before Entering on Duties.....	545
Duty of Engineer to Make Certain Estimates.....	546
Report of Engineer Shall be Accompanied by Maps.....	547
Hearing on Report of the Engineer.....	548
Proceedings on Approval of Report of Engineer.....	549
Duty of Court to Order Election form of Ballot.....	550
Notice of Election; Election, How Conducted.....	551
Oath to be Taken by Voters.....	552
Returns of Election; Result Disclosed; form of Certificate.....	553
Improvement District Commissioners Appointed; Term of Office; Compensation	554
Oath of Commissioners of Improvement Districts.....	555
Bond of Improvement District Commissioners.....	556
Improvement District Commission to Organize.....	557
Appointment of Engineer by Improvement District Commissioners—Compensation and Duties.....	558
What Maps and Profiles of Levees Shall Show.....	559
Improvement District Bonds to be Issued; Limitations upon.....	560
Form and Terms of Improvement District Bonds.....	561
Improvement District Bonds to be Submitted to Attorney General.....	562
Improvement District Bonds to be Registered by Comptroller; Not to Be Impeached	563
Books and Bonds to be Kept; Sinking Fund Provided.....	564
Improvement District Bonds; How Sold; Proceeds, How Applied.....	565
County Judge to Give Bond Before Selling Bonds.....	566
Expenses of Improvement District after Filing Petition, How Paid.....	567
Deposit to Accompany Petition Asking for Election.....	568

TABLE OF CONTENTS

xvii

CHAPTER TWENTY-ONE (Cont'd.)	SEC.
Improvement District Tax to be Levied.....	569
Duty of County Assessor to Assess Property; Removal for Failure.....	570
Tax Collector to Give Special Bond for Improvement Taxes.....	571
Delinquent Taxes of Improvement Districts to be Collected as Other Taxes	572
County Treasurer to Keep Account With Improvement Districts.....	573
Improvement District Taxes a Lien on Property Assessed.....	574
Duty of County Treasurer to Give Additional Bond for Improvement District Taxes	575
Condemnation Proceedings Allowed for Improvement Districts; Acquisition of Right of Way.....	576
Improvement District Commissioners and Employes May Enter upon Lands, When	577
Improvement Commissioners to Repair and Improve Levees.....	578
Improvement Commissioners to Let Contracts to Lowest Bidder.....	579
Bids for Construction Work on Improvement Districts, How Submitted	580
Improvement Districts Contracts Approved and Filed.....	581
Contractor Shall Give Bond in Double Amount.....	582
Construction Under Supervision of Engineer and Commissioners.....	583
Shall Have Right of Way Across Railroads, etc.....	584
Commissioners to Inspect Work—Payment of Warrants.....	585
May Contract to Make Partial Payments.....	586
Annual Report of Improvement District Commissioners.....	587
Improvement District Commissioners May Employ Attorneys.....	588
Improvement District May Acquire Property; Sue and be Sued.....	589
Improvement Commissioners May Lease or Rent Land.....	590
Improvement Commissioners May Let Use of Levees, Etc.....	591
Improvement Commissioners May Dispose of Surplus Material.....	592
Land to be Sold by Commissioners form of Conveyance.....	593
Commissioners' Courts and Municipal Authorities Given Power to Establish Seawalls and Breakwaters.....	594
May Impose Burdens on Streets and Highways for Seawalls.....	595
Issue of Bonds for Seawalls Elections; Qualifications of Voters.....	596
Seawall Election, How Conducted; Board of Inquiry, Duties of.....	597
Seawall Election Returns; Canvass; Two-thirds Vote Required.....	598
Interest, Sinking Fund; Levy of Taxes for.....	599
Cession of State Lands for the Benefit of.....	600
City and County Treasurers Custodian of Funds, Exclusive Use of.....	601
Bonds to be Issued in Cases of Counties, Cities and Towns.....	602

CHAPTER TWENTY-TWO—TAXES RELATING TO NAVIGATION DISTRICTS AND THEIR ESTABLISHMENT.

(From Title 96, R. S.)

How Navigation Districts May be Established.....	603
Application to Commissioners' Court to Contain What; Notice Given....	604
Navigation Boards in Cities and Towns With Special Charters.....	605
Notice of Hearing Before Navigation Board.....	606
Proceedings to be Recorded by County Clerk.....	607
Duties Imposed Without Compensation.....	608

CHAPTER TWENTY-TWO (Cont'd.)	Sec.
Objections and Contest on Hearing of Petition.....	609
Finding of Board at Hearing of Petition.....	610
Navigation District Election; form of Ballot.....	611
Notice of Navigation District Election.....	612
Navigation District Election to Conform to General Election Law.....	613
Qualification of Electors; Form of Oath Before Voting.....	614
Commissioners' Court to Canvass Returns; Declare Results.....	615
Navigation Commissioners, How Appointed; Qualifications; Compensation, Term of Office.....	616
Oath of Commissioners of Navigation Districts.....	617
Bond of Navigation Commissioners.....	618
Organization of Navigation District Board Quorum.....	619
Navigation Districts Engineers Appointed; Duties; Compensation; U. S. Government Aid; Proceedings in Case of.....	620
Commissioners' Court to Issue Bonds, When and How.....	621
Navigation Bonds, When Issued; Assessments, Limitation of.....	622
Navigation Bonds, Form of, Denominations, Term.....	623
Attorney General to Certify to Validity of Navigation Bonds.....	624
Certificate of Attorney General; Effect of.....	625
Record of Bonds to be Kept; Duties and Fees of Clerk.....	626
Navigation Bonds Sold, How; Limitations on Sale.....	627
Chairman of Navigation Board to Give Bond.....	628
Cost of Proceedings to Establish District; How Provided.....	629
Duty of Commissioners' Court to Levy Tax, When.....	630
Available Sinking Fund, How Invested.....	631
Navigation Tax Proceedings; Compensation of Assessor.....	632
Compensation of Tax Collector; Additional Bond Required.....	633
Duty of Tax Collector to Make List of Delinquents; Tax Sales.....	634
Duty of County Treasurer to Open Account With Navigation District.....	635
County Treasurer to Execute Additional Bond.....	636
Right of Eminent Domain Conferred on Districts.....	637
Board May Acquire Property for Navigation Purposes.....	638
Navigation Commissioners May Enter Lands to Make Surveys.....	639
Work How Done; Contracts, How Let When U. S. Government Fails to Act	640
Bids for Work, How Awarded.....	641
All Contracts to be in Writing and Filed.....	642
Navigation District Contractor's Bond.....	643
Work Supervised by Navigation Engineer; His Report.....	644
Navigation District Commissioners to Inspect Work; Payment, How Made	645
Navigation District Commissioners Report of Work to Contain What....	646
Navigation District Commissioners May Employ Assistant Engineers and Legal Counsel.....	647
Unlawful for Officers to be Interested in Contracts.....	648
Navigation District Commission May Sue and be Sued.....	649

TABLE OF CONTENTS

xix

CHAPTER TWENTY-THREE—ASSESSMENT AND COLLECTION OF TAXES IN DRAINAGE AND WATER IMPROVE- MENT DISTRICTS.

(From Chapter 3, Title 47 and Acts 1917.)

	SEC.
Assessment and Collection of Drainage District Taxes—Report, Account- ing and Disbursement, etc.....	650
Liens, Remedies, etc., for Collecting Assessments the Same as Other Taxes	651
Taxes Collected to be Known as Drainage Fund.....	652
Construction in Drainage Districts to be Let to Lowest Responsible Bidder, When	653
Water Improvement Districts—Duty of Tax Collector.....	654
Qualification of Assessor and Collector of Water Improvement District	655
Duty of Assessor and Collector of Water Improvement Districts.....	656
Assessor of Water Improvement District to Furnish List of Names.....	657
Duty to Make up Rolls—Disposition of Same.....	658
Duty of Assessor and Collector of District to Collect Taxes.....	659
District Assessor and Collector to be Charged With Tax Rolls.....	660
Assessment to Make on all Property in District, When.....	661
Water Improvement Taxes Due and Payable November 1.....	662
District Taxes Becoming Delinquent to Remain a Lien on Lands.....	663
Duty of Directors of Water Improvement Districts to Cause Tax Col- lector to Prepare List of Delinquents.....	664
Duty of Directors to Cause Delinquent Tax Record to be Prepared.....	665
Shall Publish Delinquent Tax Record.....	666
Water Improvement Directors to Employ Attorney to Sue for Taxes, When	667
Who Shall be Made Parties Defendant in Tax Suits.....	668
Sheriff's Duty to Execute Deeds to Purchasers.....	669
Compensation of Attorneys Bringing Tax Suits.....	670
10 Per Cent Penalty for Failure to Pay Taxes.....	671
How Owner May Redeem Property Returned Delinquent.....	672
Water Improvement Bonds—Tax to Pay Interest on.....	673
Depository to be Selected for Water Improvement Districts.....	674
Duty of Depository to Make Certain Reports.....	675
Duty of Water Improvement District Directors to Maintain Office.....	676
Duty of Directors as to Bonds Previously Issued, etc.....	677
Certain Laws Repealed—Districts Heretofore Established Validated.....	678
Lands Relieved from Taxation, When.....	679
Taxes to Remain in Force from Year to Year, etc.....	680
Tax for Interest, Sinking Fund and Expenses in Drainage Districts; Refundment to Construction and Maintenance Fund; Investment of Sinking Fund; Powers of Assessor and Collector; Equalization; Lien, etc.	681
Additional Tax Books; Assessment on Property in Drainage District; Penalty; Forfeiture	682
Collector Charged With Assessment Rolls in Drainage District; Com- pensation; Bond Required; Penalty for Failure to Give.....	683
Duty of Drainage District Collector to Report Delinquents to Commis- sioners' Court; Duty of Court.....	684

CHAPTER TWENTY-THREE (Cont'd.)		Sec.
Separate Tax Assessor and Board of Equalization in Drainage Districts; Election; Appointments; Powers and Duties.....		685
Levy of Annual Tax for Maintenance of Improvements; Limitations of Amount		686
Compensation of Drainage Trustee; of County Assessor and Collector; Provisions for		687

CHAPTER TWENTY-FOUR—TAXES FOR WHICH INSURANCE COMPANIES ARE LIABLE.

(From R. S. 1911 and Recent Acts of Legislature.)

Insurance Companies Required to Render Property for Taxes.....	688
On Whom Process Shall be Served in Suits Against Insurance Companies	689
Certain Insurance Companies to Deposit Securities With State Treasurer	690
Each Life Insurance Company Required to Make Report.....	691
Insurance Commissioner to Certify Amount of Tax Due from Each Company	692
No Occupation Tax on Insurance Companies Other Than Imposed Herein	693
Certificate Accepted Subject to Laws in Force.....	694
Insurance Companies Withdrawing, How Re-Admitted to State.....	695
Failure to Renew Certificate of Authority, May Still Maintain Agent.....	696
May Loan Money on Complying With Laws Relating to Loan Companies	697
Value of Insurance Company Property, How Arrived at.....	698
Licensed Agents to Report—Shall Keep Record.....	699
Gross Receipts Tax on Fire Insurance Companies.....	700
Before Forming Association Must Pay all Taxes.....	701
Certain Insurance Companies to Pay on Gross Receipts—Sworn State- ment Required	702
Insurance Commissioner Shall Certify Facts to State Treasurer.....	703
Gross Receipt Tax—How Regulated.....	704
Shall Constitute all Taxes Due.....	705
Application to Accompany Each Insurance Policy.....	706
How Insurance Companies May be Incorporated.....	707
Salaries and Expenses of Industrial Accident Board to be Paid by State	708
Mutual Insurance Companies—How Incorporated.....	709
Fees to Be Paid to Commissioner of Insurance and Banking.....	710
Annual Occupation Tax on Each Company.....	711
How "Doing Business" Is Defined by Law.....	712
Occupation Tax to be Paid by Certain Persons, etc.....	713
Tax on Persons Acting as General Adjusters, etc.....	714
Fraternal Benefit Societies Exempt from Certain Taxes.....	715

CHAPTER TWENTY-FIVE—TAXES ON FEED STUFFS AND MILL PRODUCTS.

(From Title 92, R. S.)

Concentrated Feed Stuffs in Packages of Standard Weight, to be Marked, How	716
Unground or Unbroken Grain or Seed not Included in Definition.....	717
Statutory Definition of Concentrated Feed Stuffs.....	718
Sample of Concentrated Feed Stuff to Be Deposited at A. and M. Ex- periment Station	719

TABLE OF CONTENTS

xxi

CHAPTER TWENTY-FIVE (Cont'd.)	SEC.
Each Package of Feed Stuffs to Have Tax Tag Affixed—Disposition of Funds Collected	720
Manufacturers and Importers Required to Furnish List of, and Marks.....	721
Duty of A. and M. Director to Secure Samples, How; Analysis; Publication	722
Statutory Definition of the Term "Importer".....	723
What Feed Stuffs Shall be Deemed Adulterated.....	724
Duties and Powers of Director of Experiment Station to Adopt Standards, etc.	725
Disposition of Funds for Concentrated Commercial Feed Stuffs.....	726
Funds to be Used How—Board to Make Sworn Itemized Statement.....	727

CHAPTER TWENTY-SIX—RELATING TO STATE, COUNTY AND CITY DEPOSITORIES OF PUBLIC FUNDS. (From Chapters 1, 2 and 3, Title 44, R. S.)

Duty of State Treasurer to Designate State Depository—Senatorial and Congressional Districts Defined.....	728
Duty of State Treasurer to Call for Bids for Keeping Public Funds.....	729
Such Bids How Presented, etc.; Shall State What; Opening of Bids; Selection of Depository, etc.; No Award in Excess of Paid up Capital Stock	730
Where no Bids are Submitted—Duty of State Treasurer.....	731
Bank Complying With Requirements to Receive Deposit, etc.....	732
State Treasurer Must be Satisfied that Bank Is Solvent, and Shall Give Bond, etc.	733
Bonds to be Deposited as Collateral Security.....	734
Bonds to be Delivered to Treasurer; Additional Security When; Inspection; Recourse on; Indorsement, etc.....	735
State Depository to Pay Interest on Average Daily Balance, etc.....	736
Collectors, etc., to Remit to State Treasurer, etc., Duty of Treasurer; Accounts	737
State Deposits in Excess of \$50,000 to be Remitted to State Treasurer, etc., Forfeiture for Failure, etc., Notice, Suit.....	738
Books, etc., of Depository Open to Inspection, etc.....	739
Deposit or Remittance of State Funds Made With or to Whom, and How	740
Treasurer, Comptroller and Attorney General to Make Rules, etc.....	741
State Fund to be Deposited in Depositories, Designated, etc., Provided, etc.	742
Penalty for Refusal to Deposit State Funds, etc.....	743
State Depository Shall Act How Long, Forfeiture for What Causes, etc., New Depository, etc.....	744
Balances in Depositories to be Equalized.....	745
State Depository to Issue to Treasurer on Demand, Draft, etc., on U. S. Reserve Bank, etc.....	746
Interest on Deposits to Become Part of General Revenue.....	747
Other New Bids to be Taken When, How, etc.; Award; Collateral Securities; Bonds, Regulations, etc.....	748
County Depositories—Commissioners' Courts to Call for Bids, When and How	749
Sealed Bids to be Placed in Hands of County Judge—Regulations of....	750

CHAPTER TWENTY-SIX (Cont'd.)	SEC.
Bids to Be Opened When—Interest, How Computed, Etc.....	751
Depository Selected to Execute Bond to Secure Funds.....	752
Commissioners' Court May Demand Additional Bond, When.....	753
Proceedings on Approval of Bond—Duties of the County Treasurer.....	754
Failure of Bidders for County Depositories—Power and Duty of Court	755
If Two or More Depositories; Clearing House to be Selected.....	756
County Treasurer's Checks Payable at County Seat, etc., Penalty.....	757
If Depository not Located at County Seat, Requirements.....	758
County Warrants, How Paid, etc., and Charged; Statement; Bonds, etc.	759
If no County Depository Selected, etc., May Select at Subsequent Term, etc., Period	760
New Bond May be Required of County Depositories, Penalty if not Given	761
County Treasurer not Responsible for Negligence of Depository; But etc.	762
Bids from Adjoining County, When, Requirements.....	763
City Depositories, Council to Take Bids for Depository, When and How; Bids to State What; Not to be Opened Until.....	764
Opening of Bids—Award, How Made—Bond Required.....	765
Order Designating City Depository; Transfer of Funds; Penalty; Pen- alty for Failure to Give Bond; New Bids, etc.....	766
City Warrants, How Paid, etc., and Charged; Checks Payable Where; Bonds, etc., Payment of.....	767
If no City Depository Selected, etc., May Select at Subsequent Meeting, etc., Period; New Bond; Penalty if not Given; Treasurer not Re- sponsible, Except	768
Restrictions Upon Drawing, etc., of Checks and Payment of Checks; Treasurer's Reports	769
Application of Provisions of This Chapter; Definition of Terms.....	770

CHAPTER TWENTY-SEVEN—RELATING TO THE DUTIES, FEES AND COMPENSATION OF PUBLIC OFFICERS.

(Compiled From Revised Civil Statutes, State of Texas.)

Fees Taxed Against Corporations by Secretary of State.....	771
Minimum Fees in Certain Cases.....	772
Pending Suit Not Affected.....	773
Fees Paid in Advance to Secretary and by Him to Treasury Monthly....	774
The Fee Bill Maximum Amount of Fees Allowed to be Retained by Certain Officers	775
Maximum Fees in Certain Counties.....	776
Maximum Fees in Counties Containing City of Twenty-five Thousand Inhabitants, etc.....	777
County Attorney, Compensation in Certain Counties.....	778
District Attorney, Compensation of.....	779
County Judge, Compensation as Superintendent of Public Instruction....	780
Last U. S. Census to Govern in all Cases.....	781
Amounts Allowed to be Retained out of Fees Collected; State not Re- sponsible	782
Disposition of Fees of Office, Excess Fees, etc.....	783
Officer not Collecting Maximum Fees, etc., May Retain out of Delinquent Fees Collected, Remainder Paid to Treasurer.....	784

TABLE OF CONTENTS

xxiii

CHAPTER TWENTY-SEVEN (Cont'd.)	Sec.
Fees of District Clerks in Counties Having More Than One District.....	785
Delinquent Fees, Collection of, Commissions on, Remainder paid to Treasurer	786
Compensation for Ex-Officio Services, When May be Allowed by Commissioners' Court; Proviso	787
Officials Named in Articles 3881 to 3886 to Keep Accounts; Duty of Grand Jury and District Judge as to.....	788
Officers to Make Sworn Statement, etc., to Show What.....	789
Fiscal Year Defined, and Regulation of Reports.....	790
Officers to Make Monthly Report, Statement of Expenses; Audit, etc.....	791
Certain Officers not Required to Report Fees or Keep Statements; Proviso as to District Attorney.....	792
Collector and Assessor to File With Comptroller Copies of Sworn Statements	793
Officer Recovering Money or Fees Belonging to Another Shall Inform Him and Pay Over on Demand, etc.....	794
Officers to Report Fees Collected, etc., Requisites of Report.....	795
Officers to Pay Over Fees, Etc., to Treasurer After Four Years, Etc., Statements, Disposition	796
Officer May Appoint Deputies; How; County Judge not to Influence Appointment, etc., Compensation, How Paid.....	797
Duty of District and County Attorneys to Give Opinion, etc., to Officers	798
Duty of District and County Attorneys to Give Opinion, Etc., to County and Precinct Officers.....	799
State's Attorneys With the Consent of Attorney General to Buy Property	800
State's Attorneys May Sell Property Bought for State, With Consent of Attorney General	801
Attorney Representing County May Sell Property of County.....	802
Duty of County Attorney to Give Receipt for Money Collected.....	803
Duty of State Comptroller to Prescribe Forms.....	804
State Comptroller Shall Keep Ledger for Accounting of Tax Collectors	805
Per Diem Pay of County Commissioners.....	806
Assessor's Compensation	807
Collector's Compensation	808
County Treasurer's Commission	809
County Treasurer's Commission on School Funds.....	810
Commissions Shall not Exceed \$2,000 Annually	811
Collector's Fees and How Paid.....	812
Compensation of Special School Taxes for Assessment and Collection.....	813
List of Voters Furnished, to be Used in Primary, etc.....	814
Duty of Collector to Furnish Lists.....	815
What Officers Entitled to Receive Copies of Laws.....	816
How Printed Laws Shall be Distributed.....	817
Certain Allowance to Tax Collector.....	818
Certain Manufacturers Required to Pay Registry Fees to Pure Food Department	819
Data to be Furnished Commissioner of Agriculture by Tax Assessor....	820
Comptroller Required to Keep Revenue Ledger.....	821
Fees that May be Charged by Pharmacy Board.....	822

CHAPTER TWENTY-EIGHT—GENERAL PROVISIONS RELATING
TO COUNTY FINANCES, FUNDS, ETC.

(From Chapter 1, Title 29, R. S.)

	Sec.
Duty of Commissioners' Court to Procure Ledger, etc.....	823
Duty of County Clerk to Keep Accounts.....	824
Duty of County Clerk to Balance Each Account.....	825
Duty of County Clerk to Publish Report.....	826
Compensation of Clerk for Keeping Ledger.....	827
Accounts Shall be Opened How, and Shall be Indexed.....	828
Account Shall be Kept With the Tax Collector.....	829
Receipt of Collector for Tax Rolls.....	830
How the Collector May Discharge His indebtedness.....	831
Collector Shall Make Separate Lists of Indigent and Delinquent Tax- payers, etc.	832
No Credit Shall be Entered for Delinquent Taxes Until Allowed by the Court	833
Taxes for Each Year Shall Be Kept Separate.....	834
Tax Collector Going out of Office Shall Give Tax Rolls to Successor.....	835
Tax Collector Shall Collect Occupation Tax, and Receipt for Same.....	836
County Clerk Shall Issue Occupation License, When.....	837
County Clerk Shall Make Two Reports of Licenses Issued at End of each Month	838
What the Reports of County Clerk Shall State, etc.....	839
County Clerk Shall Keep Occupation Tax Account With Collector.....	840
County Clerk Shall Keep Account With Sheriff.....	841
How Sheriff May Free Himself from Liability Under Preceding Article	842
Duty of Clerks to Report Fines, Judgments and Jury Fees Monthly.....	843
What the Reports of County Officers Shall Show.....	844
Fines Imposed and Judgments Rendered by Justices Shall be Charged Against Them, etc.....	845
Duty of the District Attorney to Make Report, etc.....	846
Duty of County Attorney to Make Report.....	847
Judgment not Collectable May be Sold.....	848
Any Officer Collecting Money for the County Shall Report Same.....	849
Money Collected by Officer Shall be Charged to Him, etc.....	850
Estray Account Shall be Kept in Ledger.....	851
Duty of County Clerk When Receipt of Estray Money Is Presented.....	852
Clerk Shall Keep Account With County Treasurer.....	853
County Treasurer Shall Register Claims Against the County.....	854
How Claims Against the County Shall Be Classified.....	855
Manner of Registering Claims Against the County.....	856
What Shall be Written on Registered Claim.....	857
Claims Shall Be Numbered, in What Order.....	858
Order in Which Claims Shall be Paid.....	859
Classification of County Funds Received by County Treasurer.....	860
Commissioners' Court May Create Other Classes of Funds, etc.....	861
Said Court May Transfer one Class of Funds to Another, Except.....	862
County Treasurer Shall Report Registered Claims Each Month.....	863
Clerk Shall Enter Report Upon Ledger, Etc.....	864
Party Receiving Payment of Claim Shall Receipt Thereon.....	865

TABLE OF CONTENTS

xxv

CHAPTER TWENTY-EIGHT (Cont'd)	Sec.
Officer Receiving Claim in Payment of Debt to County Shall Report	
List of Same.....	866
Claims Received by Other Officer than County Treasurer Shall be Reported to County Treasurer.....	867
Duty of the County Treasurer to Keep Accounts, etc.....	868
Claim Shall be Canceled, When and How.....	869
Report of Treasurer, Order Approving; to Recite What; Credit.....	870
Commissioners to Inspect and Count Cash, etc., in Hands of Treasurer, etc.	871
Affidavit of Compliance, etc.; Filing, Record and Publication of. etc....	872
Commissioners' Court Shall Examine and Correct all Accounts and Reports, etc.	873
Reports and Vouchers Shall be Filed and Preserved in County Clerk's Office	874
District Judge Shall Appoint Committee to Examine into the Finances of County	875
Duty of Such Committee in Conducting Examination.....	876
Report of Committee, and What it Shall Set Forth.....	877
Compensation of Committeemen Appointed by District Judge.....	878
All Reports Made by County Officers Shall be Sworn to.....	879
When and Where Monthly Reports Shall be Filed.....	880

CHAPTER TWENTY-NINE—LAWS RELATING TO AVAILABLE FREE SCHOOL FUNDS, CERTAIN POWERS OF COMMISSIONERS' COURTS AND PHYSICIANS, EMBALMERS, PLUMBERS, AND HUNTERS LICENSES.

(From Chapter 9, Title 48 and Other Sections of R. S. 1911.)

What Moneys Shall Constitute School Fund.....	881
County School Fund; Income from Lease of Land.....	882
Certain Locations of Public Validated.....	883
Lands Sold for Taxes to State, and Bid in by Comptroller.....	884
All Unappropriated Lands Declared Part of Permanent School Fund.....	885
One-Half of Public Domain Added to Permanent Fund, etc.....	886
Lands to be Set Aside as Asylum Lands.....	887
To Take Land for; Exercise Right of Eminent Domain.....	888
Interest, Sinking Fund on Bonds; Levy of Taxes for.....	889
Cession of State Lands for the Benefit of.....	890
City and County Treasurers Custodian of Funds, Exclusive use of.....	891
Bonds to be Issued in Cases of Counties, Cities and Towns.....	892
License Fees of Physicians—District Clerks to Keep Register.....	893
Reciprocity Allowed by Board of Medical Examiners.....	894
Applicants for License to Practice Medicine to Pass Examination.....	895
Disposition of Fees of Medical Board.....	896
Definitions of Physician and Surgeon.....	897
Assessment or Payment of Taxes May be Proven, How.....	898
Power of Commissioners' Court to Fill Certain Vacancies.....	899
How Vacancy in County Office Shall be Filled, etc.....	900
Warrants Issued Against County by Judge or Court hall Be Attested by Clerk, etc.....	901

CHAPTER TWENTY-NINE (Cont'd.)		Sec.
License Fee of Embalmers—Application to Engage in Business; Skill Required		902
Renewal of Embalmers License; Fee for.....		903
Embalmers License to be Revoked, When, How.....		904
Department to be Self-Sustaining; Moneys Received, How Appropriated		905
Unlawful to Practice Without License.....		906
Provisions do not Apply to What		907
Fees for Hunting License—Hunting Licenses Required of Non-Residents; Requisites and Duration		908
Hunting Licenses Required of Residents, When; Requisites; Authority Given, Duration; Fee.....		909
County Clerk to Issue Local Hunting Licenses, etc., Keep Stubs of, etc.		910
County Clerk to Keep Record.....		911
License Fee of Plumbers—Board to Examine Plumbers and Plumbing Inspectors; Licenses and Register of.....		912
License not to Issue for More Than One Year, Renewable, Etc.....		913
License Fees; Disposition of.....		914
Members of the Board to Receive no Compensation.....		915
Licenses not Transferable.....		916
Examination and Fee not Required of Same Person but Once.....		917
No License Until Examination Passed.....		918
Every Plumbing Firm to Have One Member a Practical Plumber.....		919

CHAPTER THIRTY—ASSESSMENT AND COLLECTION OF TAXES BY CITIES AND TOWNS.

(From Chapter 7, Title 22, R. S.)

Power of City Council to Provide for Collection of Taxes.....	920
Power of City Council to Regulate Tax Lists, Assessment of Taxes, etc.	921
Duty of Tax Payers to Render Inventory of Property, etc.....	922
Assessor and Collector, Powers, Duties, Bond, etc.....	923
Duty of Assessor and Collector to Make Lists of Personal Property, etc.	924
Unrendered Property Shall Be Ascertained, Etc., by Assessor.....	925
Assessment for Back Taxes in Cities and Towns.....	926
Appointment and Duties of Board of Equalization in Cities and Towns	927
Annual Meetings of Board in Cities and Towns.....	928
Board of Equalization in Cities and Towns Shall Value Property.....	929
Value of all Property to be Equalized by Board.....	930
Unrendered Property List in Cities and Towns to be Examined by Board	931
Board Shall Give Written Notice to Property Owners.....	932
Duty of Board to Lower Values, When.....	933
Approval of Lists and Rolls by Board of Equalization.....	934
Action of Board of Equalization of Cities and Towns, Final.....	935
Compensation of Board of Equalization in Cities and Towns.....	936
Oath to be Taken by Members City or Town Board.....	937
Duty of Assessor and Collector in Regard to Collection of Taxes.....	938
Property of Taxpayer Shall be Levied on and Sold for Taxes, When....	939
Assessor and Collector Shall Make Deed to Purchaser to Property Sold for Taxes; Effect of Deed, Right of Redemption, etc.....	940
Sale May Take Place at Another Time Than That First Advertised, When, and May be Continued from Day to Day.....	941

TABLE OF CONTENTS

xxvii

CHAPTER THIRTY (Cont'd.)

Sec.

Property Shall be Struck off to City, When.....	942
Certain Provisions of General Tax Law Applicable Except, etc.....	943
Property of Infant, etc., May be Rendered, When.....	944
Redemption of Lands Sold for Taxes by Cities or Towns.....	945
Cities Taxes, Etc., Collectable in Current Money Only.....	946

CHAPTER THIRTY-ONE—PROPERTY EXEMPT FROM TAXATION.

(Compiled from the Constitution, Revised Civil Statutes 1911, and Acts Subsequent Legislature.)

Farm Products Exempt from Taxation, When.....	947
Cemetery Lots Exempt from Forced Sale.....	948
Y. M. C. A. and Y. W. C. A. Buildings and Equipments Exempt from Taxation	949
Buffalo and Catalo Exempt from Taxation.....	950
City Council May Provide for the Exemption of Property from Taxation, etc.	951
"Residence" Defined May Secure Poll Tax Exemption, When, etc.....	952
Who Exempt from Payment of Poll Tax; When Paid; Receipt.....	953
Poll Tax, Who not Required to Pay.....	954
Homestead Exemption Does not Apply, When.....	955
Water-Users' Association Incorporated Under United States Reclamation Act	956
U. S. Lands to be Exempt from Taxation.....	957
Persons Exempt from Serving.....	958
Who Liable and Who Exempt from Road Duty.....	959
Exemption from Taxation.....	960
Cemeteries and Grounds Used for Burial of Dead.....	961
All Property Belonging to the State.....	962
All Buildings Belonging to Counties.....	963
Poor Farms and Poor Houses Belonging to Public.....	964
Property of Institutions of Purely Public Charity.....	965
Fire Engines and Apparatus.....	966
Market Houses, Public Squares, etc.....	967
Public Libraries and Property of Same.....	968
Furniture not Exceeding \$250.00 in Value.....	969
Annual Pensions Granted by State or United States.....	970

CHAPTER THIRTY-TWO—PROVISIONS OF PENAL CODE RELATING TO TAXATION AND TAX MONEYS.

(From Revised Penal Code of 1911.)

Officers of the Government Fraudulently Taking or Misapplying Public Money	971
What Included in the Term of "Misapplication" of Public Money.....	972
Receiving or Concealing Misapplied Public Money.....	973
"Officer of the Government" Defined.....	974
State Treasurer Improperly Receiving Private Funds.....	975
Diverting Special Funds.....	976
Misapplication of County or City Funds.....	977
Fraudulently Receiving Misapplied County or City Funds.....	978

CHAPTER THIRTY-TWO (Cont'd.)		Sec.
Officers Failing to Pay Over Money.....		979
Venue of Certain Prosecutions.....		980
Payment of Moneys and Accounting of Same.....		981
Duty of Officer to Pay Over Money, When.....		982
Persons or Corporations Liable for Franchise Tax Failing to Make Report		983
Charter or Right to do Business of Corporation Forfeited, Right of Officers to do Business in Corporate Name Ceases, When.....		984
Taxpayers to Make Oath—Punishment for False Affidavit.....		985
Failure of Collector to Collect Occupation Taxes.....		986
Failure of Dealer to Post Occupation License.....		987
Penalty for Violating Preceding Article.....		988
Officer Purchasing Property Sold for Taxes.....		989
Tax Collector Failing to Perform Certain Duties.....		990
Tax Collector Issuing Unauthorized Tax Receipt.....		991
Clerk Failing to Make Certain Certificates.....		992
Corporations Liable for Occupation Tax Failing to Make Report.....		993
Amounts Allowed Officers May be Retained; State or County not Responsible for Fees or Compensation, When; Officers to Make Sworn Statements of Fees Collected, Inform Party for Whom Collected and Pay Over Same.....		994
Officers to Make Quarterly Statements of Moneys in Their Hands Uncalled for		995
Moneys not Called for to be Paid Over to County Treasurer.....		996
Penalty for Violating Three Preceding Articles.....		997
Collector Extorting Excessive Taxes, etc.....		998
Tax Officer Exacting Usury.....		999
Tax Officer Assuming Taxes for Reward.....		1000
Collector Failing to Forward Transcript.....		1001
Collector Issuing Occupation Tax Receipt Without Affidavit.....		1002
Wrong License no Protection.....		1003
Obstruction of Tax Collections.....		1004
Pursuing Taxable Occupation Without License.....		1005
Plumber Conducting Business Without License; Penalty for.....		1006
Penalty not Exclusive.....		1007
Payment of Tax Bars Prosecution.....		1008
Refusal to Render or Swear to Assessment.....		1009
Failure of President, etc., of Bank, to Furnish Statement to Tax Assessor		1010
Definition of "Money and Notes".....		1011
Pretended Sale or Transfer of Coin, Notes or Bonds.....		1012
Penalty for Violation of Article 137.....		1013

CHAPTER THIRTY-THREE.

(Appendix.)

	Page
1. Act of 1917 Creating State Highway Department and Levying Taxes on Automobiles and Other Motor Vehicles.....	590-603
2. Act of 1917 Providing for the Levy of Additional Ad Valorem School Taxes by Cities and Towns.....	603-606
3. Act of 1917 Authorizing Cities to Collect Taxes for Park Purposes	606-607

PREFACE.

In the compilation of this book the Editor desires to acknowledge the assistance of Mr. Worth S. Ray, an active member of the Austin Bar, whose experience, in connection with the evolution and administration of the Tax Laws of this State, as a legislator, Chairman of the Committee on Revenue and Taxation in the Legislature, head of the Delinquent Tax Department of the Comptrollers Office, and as a practicing attorney has especially qualified him for the work of endeavoring, as far as possible, to bring order out of chaos in the arrangement of the Tax Laws as they are here presented. Also valuable assistance in the compilation of this work was rendered by Hon. Jno. S. Stewart of Houston, Texas, who is an authority on Taxation in Texas.

This work is designed to assist State, county and city officials, courts, taxpayers, corporations and practicing attorneys in unraveling the problems that constantly arise in connection with tax matters. There are many questions to be settled growing out of these problems that, it is safe to say, will not be found fully answered herein, and which will require special treatment at the hands of an expert tax lawyer to unravel. These special problems will be handled separately by our Legal Department through the medium of a special service to be rendered our subscribers.

We have tried to make the volume as complete as is practicable for all purposes, but if you do not find an answer to your problems we will take pleasure in furnishing you with a special brief on the subject in which you are interested, on request. This applies, of course, to our annual subscribers only, who have purchased the volume direct from us, and to whom the details of our Service has been explained.

Respectfully submitted,

STANDARD TRUST COMPANY,
By JNO. T. SMITH, Editor.

Austin, Texas, August 1, 1917.

THE INEFFICIENCY OF OUR TAX LAWS.

SIMPLIFYING NECESSARY—SUGGESTIONS THE SINGLE TAX THEORY.

The basic principles of our tax system in Texas are correct, but the yielding to conditions as they arose without regard to keeping intact the general scheme of this system, has brought trouble upon the taxpayer, the officials and the court alike, and for this reason the identity of the system becomes more and more shrouded in uncertainty. Among the most glaring defects the following may be mentioned:

1. When the State granted a league of land, or a section, etc., to an individual, it was immediately carried in the "Abstracts of Texas Land Titles" by giving it an abstract, certificate, and survey number, original grantee and number of acres, etc. As long as the person to whom the land was originally granted owned this entire survey it could be assessed as a whole, but when it was sold off in tracts, it became just as necessary to have a plat made of these different tracts showing the different owners as it is to have a county map showing the surveys in the county. After many years a few of our counties are having this done and the acreage shown to have escaped taxation is enormous. It is estimated that several hundred thousand acres of land escape taxation every year at a cost to the State and counties of approximately \$1,000,000 annually. This evil is being remedied in a few counties by the installation of the "Plat Book System," which is solving the problem in a most effective way where it is correctly installed.

2. Art. 7570, R. S. 1911, provides that the action of the Board of Equalization in fixing a value on property for the purpose of taxation shall be final, yet we find in Art. 7706, R. S. 1911, that after the property is reported delinquent, and if the assessment appears excessive and unreasonable the tax collector may recommend to the Commissioners' Court a reduction of the value, and the value can be reduced. The inconsistencies of these two articles are apparent and need no comment. As the Commissioners' Courts

will in most cases take the statements of the collector in such cases, it is also apparent that much confusion may arise.

3. Art. 7505, R. S. 1911, sets out the personal property subject to taxation, and in the list are stocks in corporations. It is construed that stocks in domestic corporations, except in cases of banks, are not subject to taxation for the reason the physical property of the corporations is taxed. It is also construed that stocks in foreign corporations owned by citizens of this State are subject to taxation in Texas, and the State offers no means by which the tax assessor or the Board of Equalization can determine the value of such property. Besides, a corporation in New Orleans, to illustrate, is supposed to be taxed the same as if it were located in Texas, and as stockholders live in Texas, hence, double taxation is the result. The most damaging feature of this article is the taxing of bonds.

Say a county issues \$100,000 of 5% bonds. No citizen of Texas can afford to purchase these bonds as a permanent investment for the reason he would be liable for the taxes on same, which would likely amount to, all told, at least \$2 on the \$100, hence his interest rate would be cut to 3%, which he can not afford.

If the State would specifically exempt State, county, and municipal bonds from taxation in the hands of individuals and corporations it would tend to open a home market for our own bonds.

4. One of the most difficult and complex questions of a taxpayer is, when has he paid all his taxes in Texas? We know the State and county taxes are payable to the county collector of the county in which the property is located, any time between October 1st and January 31st, without extra cost. A non-resident can pay to the Comptroller any time between October 1st and December 31st, and all non-residents owning property in an unorganized county are required to render and pay taxes to the Comptroller. Most district taxes, such as school, road, drainage, levy, improvement, etc., are assessed on the county tax rolls, but this is not always the case. Some school districts have their own assessor and collector, but how is a non-resident to know anything of this extra tax? Usually he does not until the cost of a suit is added to the taxes, which in many cases amounts to more than five times the taxes; again, city taxes are payable to the city collector, and in some cases the independent school district is separate from the city and payment should be made to the officials of the school district also. Also, these several boards of equalization all pass on the value of the same property and frequently their ideas of values are very diverging. If the law was changed so a taxpayer could render his property for all purposes to one official, and have one

board of equalizers to fix its value, and one tax collector to whom they could pay all the taxes there would be much more money in taxes collected and at much less expense to the taxpayer.

Some have suggested that the expense of the State could be borne from taxes derived from franchise, inheritance, gross receipts and occupation taxes. That is true, but it is holding out temptations to expend money when dealing principally with corporations, without the restraint that the voters of the State give, to go beyond an economical expenditure of the public funds. The matter of enforcing the collection of taxes on property in Texas is so cumbersome in counties that have no up-to-date plat book system, that it is almost a failure. The minute details of a tax suit are so numerous and tedious that an attorney is hardly justifiable in giving these suits the attention they should have for the remuneration he receives. Again, the multiplicity of errors on every tax roll and no effort made by the counties to eliminate them, constitute one of the most expensive and creates one of the strongest barriers to the collection of taxes that exists.

If the Legislature would require an efficient Plat Book System to be installed in every county these errors would be eliminated, and if a penalty were placed on those charged with the duty of enforcing the tax laws to compel them to either collect the taxes or cancel same from the tax rolls, there would practically be a "clean slate" all the time on tax matters.

The fee system falls heavier on a delinquent taxpayer than most any other person. It is common for suit to be brought to collect \$1.25 taxes, and the cost amounts to \$15 to \$20. This is clear out of proportion and should be remedied.

SINGLE TAX THEORY.

There is growing up in this country a theory of taxation that is intended to place all taxes solely on land. The proponents of this scheme of taxation argue, that society, as in the case of our large cities, creates an unearned increment in land values, especially in cities; that it is definite in operation and can not be shifted; that it is not a tax on labor, the arts or sciences, etc.; that it places the burden of taxation where it belongs, at the source, etc. Those who oppose such a scheme argue that the land owners are not the wealthy class, that it is wrong in principle, it would destroy the inheritance tax, franchise tax, automobile tax and other forms of taxation that can not be shifted. The millions of dollars in bonds, stocks, wares, and improvements would escape taxation and the enormous deficiency this would cause, would be made up by

tax on land. Such a scheme would tend to centralize the land in the hands of a few who would be able to own it, for it would be almost a self-evident fact that a tenant could not pay the price for land that he could cultivate, and live off of it, meet his payments and the taxes he would be compelled to pay. It is like planting cotton on one certain piece of land each year. The cotton goes through the mill, made into cloth for the merchant to sell at a high price to the farmer and land owner that produced it. The cotton seed goes through the oil mill and is made into oils, lard, meal, hulls and cake and sold to the land owner and farmer that produces it. The manufacturer owns no land, hence, he pays no taxes to support his government, National, State, county or city. The land owner pays all these taxes, and the taxes to educate the children of the rich manufacturer who owns no land. The compensating laws of business and nature declare that the products from the soil and the wealth that flows from such production should bear its part of all taxes.

The land that is continuously worked and made to produce only one article will deteriorate in value and soon becomes incapable of bearing this burden.

In this brief statement we have only attempted to call attention to a few of the more salient features that in our opinion should have attention by our State Legislature. The law and annotations that follow gives the law as it now exists, including the Acts of the Thirty-fifth Legislature.

The Tax Department of the Standard Trust Company is the most complete of any tax office in Texas. All kinds of corporation and Federal taxes are promptly looked after, lands rendered and taxes paid, records of the State Departments examined for information concerning taxes and lands, etc.

JOHN T. SMITH, Editor.

ANNOTATED TAX LAWS OF TEXAS.

CHAPTER I.

PROVISIONS OF THE CONSTITUTION OF TEXAS RELATING TO TAXATION.

	Sec.		Sec.
All Taxes to be Equal and Uniform—Different Kinds of Taxes—Exemptions and Limitations..	1	Sheriff to be Collector in Certain Instances	16
Occupation Taxes Shall be Equal and Uniform—Certain Exemptions	2	Legislature May Tax Other Objects	17
Taxes Shall be Levied by General Law for Public Purposes..	3	Duty of Legislature to Equalize Taxes	18
Power to Tax Corporations.....	4	Limitations Upon Power of Legislature to Levy Taxes.....	19
Railroad Property Subject to City Taxes	5	Power of Legislature to Levy State Advalorem Tax for Benefit of Indigent Confederate Soldiers	20
Method of Making Appropriations	6	Legislature Not to Grant Certain Powers to Cities and Counties....	21
Appropriations Not to be Diverted	7	Cities and Towns to Be Chartered by General Law, etc.	22
Method of Assessing Railroad Property and Where.....	8	Home Rule Amendment for Cities of Five Thousand and Over.....	23
Limitations on Rate of Taxation..	9	Assessment and Collection of Taxes in Counties, Cities and Towns	24
Taxes Not to be Released Except When	10	Providing for Seawall Taxes—Eminent Domain Granted	25
To be Assessed in County Except When	11	Legislative Donations for Construction of Seawalls.....	26
Property in Unorganized Counties	12	Certain Property to Be Exempt from Taxation	27
Redemption from Tax Sales by Owners	13	Special Taxes to Be Levied for School Purposes, When.....	28
Providing for Election of Assessors	14		
Creating Lien for Taxes on Property	15		

1. All Taxes to Be Equal and Uniform—Different Kinds of Taxes—Exemptions and Limitations—Taxation shall be equal and uniform. All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law. The Legislature may impose a poll tax. It may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State. It may also tax incomes of both natural persons and corporations, other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupa-

tion tax; provided, that two hundred and fifty dollars worth of household and kitchen furniture, belonging to each family in this State, shall be exempt from taxation; and provided, further, that the occupation tax levied by any county, city or town, for any year on persons or corporations pursuing any profession or business, shall not exceed one-half of the tax levied by the State for the same period on such profession or business. [Const. Art. 8, Sec. 1.]

See also Sec. 3 and Sec. 3a, Art. 7 of the Constitution, relating to school, occupation and poll taxes, omitted from this compilation.—[Editor.]

"Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law, except such property as two-thirds of both houses of the Legislature may think proper to exempt from taxation. The Legislature shall have power to lay an income tax, and to tax all persons pursuing any occupation, trade or profession; provided, that the term occupation, shall not be construed to apply to pursuits, either agricultural or mechanical." Const. 1845, 1861, 1866, Art. VII, Sec. 27; Const. 1869, Art. XII, Sec. 191.

Towns incorporated under R. S. 1895, Chap. 11, Title 18, have no power to levy a poll tax. *Morris v. Cummings*, 91 Tex. 618, 45 S. W. 383.

Poll tax levied by Section 3 of Article 7, is equal and uniform throughout the State upon all persons subject to payment of poll tax. *Solon v. State*, 54 Cr. App. 262, 114 S. W. 349.

A billiard table kept for amusement and not for profit, is not subject to an occupation tax. The words "pursuing any occupation, trade or profession," import profitable pursuits. *Tarde v. Benseman*, 31 Tex. 277.

It is clearly settled by the great weight of authority that the constitutional provisions having reference to taxes for general revenue, that they shall be equal and uniform, etc., are not applicable to assessments by cities for local improvements. *Roundtree v. City of Galveston*, 42 Tex. 612; *Taylor v. Boyd*, 63 Tex. 542; *Adams v. Fisher*, 63 Tex. 651; *County of Harris v. Boyd*, 70 Tex. 237, 7 S. W. 713; *Higgins v. Bordages*, 88 Tex. 458, 31 S. W. 52, 803; *Transportation Co. v. Boyd*, 67 Tex. 153, 2 S. W. 364; *City of Paris v. Brenneman*, 126 S. W. 59; *City of Austin v. Nalle*, 102 Tex. 536, 120 S. W. 996; *Wood v. City of Galveston*, 76 Tex. 133, 13 S. W. 229; *Allen v. City of Galveston*, 51 Tex. 320; *Lovenberg v. City of Galveston*, 17 C. A. 162, 42 S. W. 1024; *City of Dallas v. Ellison*, 10 C. A. 39, 30 S. W. 1128.

A graduated occupation tax on telegraph companies, proportioned to the business done, regardless of a distinction between business done wholly within the State and business done in part without the State, does not violate the rule of uniformity prescribed by this section, nor is it invalid as a regulation of interstate commerce. *W. U. Tel. Co. v. State*, 55 Tex. 318. But see this case in 105 U. S. 460, where it was held that this statute was a regulation of interstate commerce, and therefore void. See, also, *W. U. Tel. Co. v. State*, 62 Tex. 630.

Act of 1871, imposing annual occupation tax of \$250.00 upon every person or firm dealing in stocks or bills of exchange, in any city or town exceeding 5,000, and \$50 upon such occupation in cities and towns of less population, is not violative of the limitation in this section that taxation

shall be "equal and uniform throughout the State." *Insurance Co. v. State*, 42 Tex. 639.

It must not be supposed that uniformity and equality can be of perfect logical exactness and mathematical accuracy. Evidently, in many instances, approximate equality in apportioning its burden is all that, from the nature of the tax, it is possible to attain. If there is such equality and uniformity as conforms to the standard provided in the Constitution, or reasonably deducible from it; or such as comports with recognized precedents, and long and well established legislative usage, and judicial sanction, it is all that can be required, though on abstract reasoning it may not be found in entire accordance with a strict literal and technical rule of uniformity, and may appear to some extent, in individual instances, with unequal weight. *Insurance Co. v. State*, 42 Tex. 639.

Equality and uniformity of taxes on occupations, to the approximate extent of which it is reasonably attainable, is required by the Constitution, and is an essential element in the power of taxation. But discrimination in occupations and classifications of them is a reasonable and proper rule applied by the Legislature for the purpose of apportioning such taxes with equality and uniformity. *Blessing v. City of Galveston*, 42 Tex. 659.

Graduated occupation tax upon liquor dealers is constitutional. *Albrecht v. State*, 8 Cr. App. 228; *Fehay v. State*, 27 Cr. App. 146, 11 S. W. 108; *Tonella v. State*, 4 Cr. App. 325; *Higgins v. Rinker*, 47 Tex. 393; *Harris v. State*, 4 Cr. App. 131; *State v. Stephens*, 4 Tex. 137; *State v. Bock*, 9 Tex. 369; *Aulanier v. Governor*, 1 Tex. 665.

This section expressly empowers the Legislature to impose occupation taxes, and Section 2 of this Article requires that such taxes "shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax." These provisions do not necessitate equality and uniformity as between different classes of occupations, nor require the imposition upon every class of the same conditions precedent to their lawful pursuit. *Fahey v. State*, 27 Cr. App. 146, 11 S. W. 108.

The requirement from retail liquor dealers of a license and of prepayment of the tax for a year does not contravene these provisions, though these conditions are not imposed upon other occupations. *Fahey v. State*, 27 Cr. App. 146, 11 S. W. 108.

One county may levy a larger county tax upon an occupation than is levied upon the same occupation by other counties. *Fahey v. State*, 27 Cr. App. 146, 11 S. W. 108.

Occupation tax on lawyers is constitutional. *Languille v. State*, 4 Cr. App. 312; *Ex parte Williams*, 31 Cr. App. 263, 20 S. W. 580.

Taxation is "equal and uniform" if all persons in the same calling, trade or profession are taxed alike. *Ex parte Williams*, 31 Cr. App. 263, 20 S. W. 580; *Williamson v. State*, 17 Cr. App. 253.

Act providing for a levy of an occupation tax upon the sale of "Illustrated Police Gazette," etc., is not subject to the objection of inequality and ununiformity of taxation. *Williamson v. State*, 17 Cr. App. 254.

It is only when individuals of a class are singled out for exemption that the objection, upon constitutional grounds, that the tax levied is not "equal and uniform upon the same class of subjects," can obtain. *Williamson v. State*, 17 Cr. App. 254.

An occupation tax can be imposed upon a company domiciled without this State, but pursuing an occupation within this State, and the agent of

such company may be made amenable by fine for non-payment of the tax. *Ex parte Schmidt*, 2 Cr. App. 196.

Lands situated within the limits of a municipal corporation, which are used solely for agricultural purposes may be subjected to the same rate of municipal taxation as property which is strictly urban, and which may be more directly benefited by the expenditure of money raised by taxation. *Norris v. City of Waco*, 57 Tex. 635.

Taxation is "equal and uniform" when no person or class of persons in the territory taxed is taxed at a higher rate than are other persons in the same district upon the same value or thing, and when the objects of taxation are the same by whomsoever owned or whatever they be. *Norris v. City of Waco*, 57 Tex. 641.

The taxing power of the Legislature is not limited to the objects and subjects of taxation specified in this section, providing that all property shall be taxed in proportion to its value. Dogs are not "property" within the meaning of this section, but taxes may be imposed upon them as a police regulation. *Ex parte Cooper*, 3 Cr. App. 489; *Ex parte Mabry*, 5 Cr. App. 96.

The constitutional requirement of equality and uniformity in taxation is not infringed by a municipal ordinance exacting a license tax from the owners of dogs. *Kidd v. Reynolds*, 20 C. A. 355, 50 S. W. 600.

A tax may be imposed upon an occupation as a police regulation, and is within the discretion of the Legislature. *Thompson v. State*, 17 Cr. App. 253.

When the Legislature has declared that a named occupation shall be taxed for the benefit of the State, and has fixed the amount of the tax, then, and not before, has a county, city or town the power to tax that occupation. *Hoefling v. City of San Antonio*, 85 Tex. 235, 20 S. W. 85; *City of Laredo v. Lowry*, 20 S. W. 89; (overruling *Hirshfield v. City of Dallas*, 29 Cr. App. 242, 15 S. W. 124); *Ex parte Terrell*, 48 S. W. 504; *State v. G. H. & S. A. Ry.*, 100 Tex. 174, 97 S. W. 71; *Brown v. Galveston*, 97 Tex. 16, 75 S. W. 488.

A municipal tax, upon butchers vending meat, of \$75.00 per stall per annum, and collected only of butchers vending meat at private stalls, and not of butchers renting stalls from the city, is invalid as unequal and uniform. *Hoefling v. City of San Antonio*, 85 Tex. 235, 20 S. W. 85.

A city ordinance imposing payment of a license fee upon the right to own carriages and other vehicles, could not upon its face, nor from the fact that the revenues therefrom were devoted to street improvement, be pronounced a revenue measure only, and invalid because an occupation tax not imposed by the State; but would be presumed to be passed in the exercise of the police power of the city. *Brown v. City of Galveston*, 97 Tex. 16, 75 S. W. 488.

A city charter authorizing the collection of interest on delinquent taxes is not violate of this section requiring equality and uniformity of taxation. *G. & W. Ry. v. City of Galveston*, 96 Tex. 525, 74 S. W. 537.

Act creating new county by detaching territory from old county, and providing that the new county should be liable to parent county for its pro rata of the existing debts, and making provision for the collection of a county tax upon the property so detached, is not unconstitutional as unequal and ununiform taxation. *Presidio County v. Jeff Davis Co.*, 13 C. A. 115, 35 S. W. 177.

An ordinance imposing a tax on vehicles kept for public use, not taxed

by the State, is void. *Ex parte Terrell*, 48 S. W. 504, 40 Cr. App. 28.

The purpose of this action was to place a limitation on the power of municipal corporations to levy and collect municipal taxes; to deny to them the unrestricted power to tax any occupation. *Ex parte Terrell*, 49 S. W. 504, 40 Cr. App. 28.

Act of the Twenty-fifth Legislature imposing upon peddlers a license tax of \$350.00, and giving to a merchant the right to peddle anywhere in the county by the payment of a less tax, is unconstitutional. *Ex parte Overstreet*, 39 Cr. App. 474, 46 S. W. 825.

Act of March 24, 1881, imposing on "every firm, person or association of persons, owning or running any palace, sleeping or dining room cars not owned by the railroad company in this State," an annual tax of \$2.00 per mile, and relieving from the tax corporations which own or run such cars on railways belonging to themselves, is not a tax equal and uniform and is unconstitutional. *Pullman Co. v. State*, 64 Tex. 274.

Act of Twenty-fifth Legislature levying occupation tax upon peddlers, but exempting from its operation persons who are blind, deaf and dumb, wounded persons and ex-soldiers who are incapacitated to do manual labor, is obnoxious to this section requiring equality and uniformity of taxation. *Ex parte Jones*, 38 Cr. App. 482, 43 S. W. 513.

Act imposing occupation tax on cotton buyers, but exempting such as pay an occupation tax as merchants, is unconstitutional. *Rainey v. State*, 41 Cr. App. 254, 53 S. W. 882; *Poteet v. State*, 41 Cr. App. 268, 53 S. W. 869.

The Legislature has the power, under this section, to authorize a municipal corporation to levy a poll tax. *Perry v. City of Rockdale*, 62 Tex. 453.

The requirement of this section that all property in the State shall be taxed in proportion to its value, and that taxes shall be equal and uniform, controls municipal as well as State taxation. The assumption by a city council of the power to exempt property of a gas company from taxation in consideration of the company furnishing the city with gas for public puposes, at a reduced rate, is ultra vires and violative of this section. *City of Austin vs. Austin Gas, etc., Co.*, 69 Tex. 180, 7 S. W. 200; *Altgeld v. San Antonio*, 17 S. W. 75.

Though telegraphic companies may be subject to congressional regulation, they are also subject to pay occupation taxes to the State; at least until Congress shall otherwise provide. *W. U. Tel. Co. v. State*, 55 Tex. 314.

But the State cannot levy a tax upon interstate commerce. *W. U. Co. v. Texas*, 105 U. S. 460; *W. U. Co. v. State*, 62 Tex. 630.

The general rule is that the owner of real estate leased is taxed upon the entire value of the property, but where the leasehold is taxed, its value should be deducted from the taxable interest of the owner of the fee. *Dougherty v. Thompson*, 71 Tex. 192, 9 S. W. 99; *Thammell v. Faught*, 74 Texas 557, 12 S. W. 317.

A lease from the State in which the State reserves the right to sell and thereby terminate the lease at any time, is not such an estate in lands as is taxable. *Trammell v. Faught*, 74 Tex. 557, 12 S. W. 317.

The spirit of the Constitution requires that the taxable value of the property in the territory taken off by the newly organized county, in its relation to the taxable value of the property in the territory left in the parent county, must be the criterion by which the indebtedness between the two counties should be apportioned. *Mills County v. Brown Co.*, 10 C.

A. 356; 87 Tex. 475; *Presidio County v. Jeff Davis Co.*, 13 C. A. 115, 35 S. W. 177.

Personal property, including promissory notes, owned by a non-resident, does not necessarily become taxable in Texas by reason of being temporarily within its limits, but may, under certain circumstances, acquire such a situs in this State as to become taxable here. *Hall v. Miller*, 102 Tex. 294, 115 S. W. 1168; *State v. Fidelity, etc., Co.*, 35 C. A. 214, 80 S. W. 544; *Hardesty v. Fleming*, 57 Tex. 401; *Llano Cattle Co. v. Faught*, 69 Tex. 406, 5 S. W. 494; *Clampitt v. Johnson*, 17 C. A. 281, 42 S. W. 866; *Waggoner v. Whaley*, 21 C. A. 3; *Piano Co. v. City of Dallas*, 61 S. W. 942.

The language of this section is broad enough to embrace every kind and class of property within the limits of the State over which the State has jurisdiction, whether it be owned by citizens or non-residents. *Hall v. Miller*, 102 Tex. 294, 115 S. W. 1168.

Personal property situated in an unorganized county is subject to taxation in the county to which such organized county is attached. *Llano Cattle Co. v. Faught*, 69 Tex. 402, 5 S. W. 494; *Hardesty v. Fleming*, 57 Tex. 395; See *Thomas v. Gay*, 169 U. S. 264.

For the purpose of taxation, and to avoid duplicate taxation, stock on range in pastures which lie within two or more counties must be rendered to the several counties in proportion that the land in each county is to the whole pasture. *Nolan v. San Antonio Ranch Co.*, 81 Tex. 315, 16 S. W. 1064.

Where the assessment of the intangible assets of a railway corporation was fixed at their full market value, while the value of all other property in the county was assessed at two-thirds of its actual value, such corporation was denied the right of equal and uniform taxation secured to it by this section. *Lively v. M. K. & T. Ry.*, 102 Tex. 559, 120 S. W. 852.

The action of the proper officers in assessing for State and county purposes tangible property at less than its real value, and intangible property at its full value, is the act of the State, and is an inequality of taxation, from which relief can be had by the owner of the intangible property. *Lively v. M. K. & T. Ry.*, 102 Tex. 559, 120 S. W. 852, 121 S. W. 1149.

The fact that a taxpayer was not required to pay more than he should, his property not being assessed beyond its true value, did not satisfy his constitutional right to have all others owning property in the same territory and subject to like taxation, bear their equal proportion of the burdens of government. *Lively v. M. K. & T. Ry.*, 102 Tex. 559, 120 S. W. 852, 121 S. W. 1149.

Where the intangible assets of a corporation were assessed by the State authorities at their full value and its proportion thereof set aside to a county for taxation, but the county authorities assessed the tangible property situated in such county on the basis of two-thirds only of its actual value, the corporation could enjoin the collection of so much of the tax against it as was based on the assessment of its property at a higher proportionate value than that of others. *Lively v. M. K. & T. Ry.*, 102 Tex. 559, 120 S. W. 852, 121 S. W. 1149.

Where property, generally, of a county is assessed for taxation at 75 per cent. of its value, and the tangible property of a railway is assessed at 50 per cent. of its value, and its intangible assets assessed at their full value, the value of the tangible and intangible property of such railway company being equal, no inequality is shown, and the tax collector cannot

be enjoined from collecting the taxes so assessed. *M. K. & T. Ry. v. Hassell*, 123 S. W. 190, 57 C. A. 522.

Where the property of individuals of a county was assessed at 50 per cent, of its real value, an assessment of the intangible property of a railway company at its full value is violative of this section requiring equality and uniformity of taxation. *M. K. & T. Ry. v. Kone*, 122 S. W. 424.

The Legislature having the constitutional right to impose a tax on occupation, the mode in which it should be exercised is a matter for them, not to be questioned by the courts. *State v. Stephens*, 4 Tex. 137.

It may also impose both income and occupation taxes. *State v. Stephens*, 4 Tex. 137; *Pullman, etc., Co. v. State*, 64 Tex. 280.

Act of March 31, 1885, providing for the taxation of National Banks, is constitutional, and does not conflict with the Act of Congress forbidding a higher rate of taxation on national bank stock than any other moneyed capital. *Engelke v. Schlenker*, 75 Tex. 559, 12 S. W. 999; *Rosenberg v. Weeks*, 67 Tex. 578.

The legality of the assessment of a tax on the property of a National Bank, which does not exceed its true value, cannot be affected by the custom of the assessor to assess other property at a uniform valuation less than its true value. *Engelke v. Schlenker*, 75 Tex. 559, 12 S. W. 999.

But, see *Lively v. M. K. & T. Ry.*, 102 Tex. 559, 120 S. W. 857; *M. K. & T. Ry. v. Kone*, 122 S. W. 424; *Langley v. Smith*, 126 S. W. 660.

An assessment of National Bank stock at 85 per cent. of its value, while all other property subject to taxation is assessed at 41 per cent. is an inequality of taxation, and the tax collector will be enjoined from collecting the tax based on such valuation. *Langley v. Smith*, 126 S. W. 660.

Deduction of debts from the value of national bank stock for the purpose of taxation, is in effect allowed by the laws of this State. *Rosenberg v. Weeks*, 67 Tex. 578; *Primm v. Fort*, 23 C. A. 605, 57 S. W. 86.

The purpose of the statutes requiring corporations to render for taxation and the payment of taxes upon all their property, which except banking corporations, requiring them to render only their real estate and the shareholders to render their shares, was not to confer special privileges upon banking corporations, etc., but was to impose duties upon them so as to prevent evasions of law and to secure that equality and uniformity of taxation which the Constitution enjoins. *City of Dallas v. St. Ry. Co.*, 95 Tex. 277, 66 S. W. 835.

A repeal of former tax laws does not relinquish the right of the State to recover taxes previously levied but uncollected. *Clegg v. State*, 42 Tex. 605.

No right of action exists for the non-payment of a tax until a valid assessment has been made. *Clegg v. State*, 42 Tex. 605; *Rosenberg v. Weeks*, 67 Tex. 583.

A statute imposing on railway companies an occupation tax equal to one per cent. of their gross receipts does not violate this section. The fact that the franchise of a railroad company to exist and do business is taxed as property, does not prevent the State from imposing an occupation tax upon its business, and does not make the same double taxation. *State v. G. H. & S. A. Ry.*, 100 Tex. 171, 97 S. W. 71; (overruling *G. H. & S. A. Ry. Co. v. Davidson*, 93 S. W. 436).

The above statute, however, held to impose, so far as companies whose receipts from interstate business are concerned, a burden on interstate

commerce and therefore violative of the Commerce Clause of the Federal Constitution. *G. H. & S. A. Ry. v. Texas*, 210 U. S. 217.

While no direct authority to levy an occupation tax is granted in this section to counties, cities and towns, the Legislature could authorize such tax, but under this provision the legislative authority to permit the levy of an occupation tax is limited so as not to exceed one-half of the tax levied by the State. *State v. G. H. & S. A. Ry.* 100 Tex. 174, 97 S. W. 71.

Act of 1905 providing for the valuation of the intangible assets of railroads by a "State Tax Board" is constitutional. The Legislature was authorized to provide a mode for ascertaining such value. This section does not require that the same method be adopted in all cases for ascertaining the value of property for the purpose of taxation. *M. K. & T. Ry. v. Shannon*, 100 S. W. 142, 100 Tex. 379.

An occupation tax upon oil products, and the payment of an ad valorem tax upon the real estate producing oil, does not constitute double taxation. *Producers Oil Co. v. Stephens*, 99 S. W. 159.

The fact that assessors have habitually undervalued property, and will probably continue to do so, will not authorize an injunction restraining the State Tax Board from certifying to the assessors of the several counties of the State the value of intangible assets of railroads, on the assumption that the assessors will fix the value of the property so reported by said board at a proportionately higher figure than other property. *M. K. & T. Ry. v. Shannon*, 97 S. W. 527; (affirmed 100 Tex. 379, 100 S. W. 142).

Act of 1905 imposing annual occupation tax of \$5,000 on persons engaging in the business of purchasing assignments of unearned wages, and exempting therefrom persons who procure such assignments in payment for the necessities of life, the purchase of a homestead, etc., or where the assignment shall not be taken at a discount, puts a tax upon a class, and exempts other classes, and is therefore violative of this section; and is violative of the Fourteenth Amendment to the Constitution of the United States. *Owens v. State*, 53 Cr. App. 105, 112 S. W. 1076.

Act of 1907 imposing a license tax on barbers is violative of that provision of this section exempting from occupation tax persons engaged in mechanical pursuits. *Jackson v. State*, 55 Cr. App. 557, 117 S. W. 818.

Terrell Election Law, levying a poll tax on every male person between the ages of 21 and 60, except, etc., is not unconstitutional for inequality and non-uniformity. *Solon v. State*, 54 Cr. App. 261, 114 S. W. 350; *Bluitt v. State*, 56 Cr. App. 528, 121 S. W. 168.

Article 5061, R. S., making all property not exempt subject to taxation, is in harmony with the Constitution and was enacted to make this section effective. *Hall v. Miller*, 102 Tex. 294, 115 S. W. 1168.

Act of Feb. 12, 1907, imposing occupation tax of \$5,000 upon c. o. d. shipments of liquor, is not violative of this section. *Craddock v. Wells Fargo Ex. Co.*, 125 S. W. 60. But see later decision of United States Supreme Court declaring this law invalid. *Rosenburger v. Pacific Express Co.*, 241 U. S. 48.

Where the State occupation tax prescribed for payment by fire and marine insurance companies doing business in this State was \$200, the City of Houston, being a city of 10,000 inhabitants, and coming within the provisions of Article 11, Section 5 of the Constitution, had the author-

ity to enact an ordinance prescribing an occupation tax of \$75.00 on such fire and marine insurance companies. *Ex parte Schmidt*, 2 Cr. App. 199.

The power of the Legislature to impose taxes is not limited to the objects and subjects of taxation specified in this section. The Legislature may impose a tax upon dogs under its police power, and such tax, though out of proportion to the taxes levied upon other property as to value, is not violative of this section. *Ex parte Cooper*, 3 Cr. App. 489.

The business of photographer is not a mechanical pursuit, such as is exempt from taxation under this section. This section has reference to builders and carpenters, or those schooled as workers with tools. Because a business is partly mechanical does not exempt it from an occupation tax. *Mullinix v. State*, 42 Cr. App. 526, 60 S. W. 768.

Occupation tax statute imposing tax upon traveling salesmen of patent or other medicines, and exempting from its operation salesmen for wholesale drug houses, does not violate this section. *Needham v. State*, 51 Cr. App. 249, 103 S. W. 857; *Huffman v. State*, 55 Cr. App. 144, 115 S. W. 578.

The requirements with reference to occupation taxes cannot be evaded by the fact that one pursuing an occupation pays an income tax. *Pullman, etc., Co. v. State*, 64 Tex. 274.

The fact that a street railway is required to pay franchise tax for the use of streets, etc., will not preclude the city from imposing an ad valorem tax on such franchise as property of the corporation. *City of Dallas v. Electric Ry. Co.*, 95 Tex. 277, 66 S. W. 835.

A law empowering defendants to plead limitation in pending suits by a city for taxes due more than four years before the suit begun, is violative of this section. *Ollivier v. City of Houston*, 22 C. A. 55, 54 S. W. 940; *Ollivier v. City of Houston*, 93 Tex. 201; *City of Houston v. Stewart*, 40 C. A. 499, 90 S. W. 49; see, also, *Link v. City of Houston*, 59 S. W. 566; *Link v. City of Houston*, 94 Tex. 378, 60 S. W. 664.

Act creating new county out of part of territory formerly belonging to another or parent county, and providing that the new county thus formed shall bear its pro rata part of the existing indebtedness of the parent county, said pro rata to be based upon the value of the property taken from the parent county for each year of the existence of said debt, to be determined from the tax rolls, etc., does not violate this section, requiring equality and uniformity of taxation. *Presidio County v. Jeff Davis County*, 13 C. A. 157; *Brewster County v. Presidio County*, 19 C. A. 638, 48 S. W. 213; *Mills Co. v. Brown Co.*, 85 Tex. 391, 20 S. W. 81.

Act of board of equalization, fraudulently raising the value of the property of one taxpayer above its actual value, and in placing that of other taxpayers at much less than its actual value, is void under this section, notwithstanding the statutory provision that the official acts of such board shall be final. *Johnson v. Holland*, 17 C. A. 210, 43 S. W. 71.

Taxes illegally or fraudulently imposed and involuntarily paid may be recovered. *Texas L. & C. Co. v. Hemphill Co.*, 61 S. W. 334; *Taylor v. Robinson*, 72 Tex. 364, 10 S. W. 245; *City of Galveston v. Snyder*, 39 Tex. 237; *Baker v. Panola Co.*, 30 Tex. 87; *City of Marshall v. Snediker*, 25 Tex. 460.

Act of 1907, levying an occupation tax of \$2,000 on the sale of non-intoxicating malt liquors in local option territory, and exempting druggists from the operation of the Act, is violative of this section, and also of Section 2 of this article. *Ex parte Woods*, 52 Cr. App. 575, 108 S. W. 1171.

Act imposing upon that part of the newly organized county taken from the parent county, by taxation, the burden of paying the proportionate liabilities ascertained by suit, is not violative of this section. *Mills Co. v. Brown Co.*, 87 Tex. 484, 29 S. W. 650; *Presidio Co. v. Jeff Davis Co.*, 13 C. A. 115, 35 S. W. 177.

The Legislature may classify the subjects of taxation, and these classifications may, as they will, be more or less arbitrary; but when the classification is made all must be subjected to the payment of the tax imposed who, by the exercise of the tax on which the classification is based, fall within it, unless excepted under some other constitutional provision. *Solon v. State*, 54 Cr. App. 261, 114 S. W. 350; *Pullman Co. v. State*, 64 Tex. 274.

Mandamus will lie to compel the Commissioner of Insurance to impose the tax assessment upon all insurance companies, as authorized by Acts Thirty-first Legislature. Ch. 18, Sec. 16, to pay the expenses of the Fire Rating Board. *Firemans' Fund Ins. Co. v. Von Rosenberg*, 132 S. W. 467.

A direction to an assessor of taxes to assess mineral rights severed from the surface in a conveyance, held not to render such assessment invalid for inequality. *State v. Downman*, 134 S. W. 787.

An assessment of mineral rights severed from the ownership held not invalid because the owners of the surface were required to pay the same tax as other owners who had not severed the mineral rights in their land. *State v. Downman*, 134 S. W. 787.

Under the Constitution, Article 14, Section 7, and Article 8, Section 1, and Sayles Civ. Statutes, 1897, Article 5062, a deed to mineral rights held a severance in ownership of the minerals from the surface of the ground, authorizing taxation of the grantee's interest as an interest in land. *State v. Downman*, 134 S. W. 787.

Minerals contained in land are property, and when severed from the land by a proper conveyance may be taxed separately from the land itself. *State v. Downman*, 134 S. W. 787.

Act of the Twenty-fifth Legislature imposing on every "dealer" in lightning rods an annual tax to the State of \$36, and to the county \$18, and on every person "canvassing for the sale" of lightning rods an annual tax of \$100 to the State, and \$50 to the county, is not unequal and un-uniform taxation upon the same class of subjects. *Camp v. State*, 61 Cr. App. 231, 135 S. W. 146.

License and inspection fees levied under the police power of a city are not an "occupation tax" within the meaning of this section of the Constitution, providing that persons engaged in mechanical and agricultural pursuits shall not be required to pay an occupation tax. *Ex parte Cramer*, 62 Cr. App. 11, 136 S. W. 61.

The fees imposed by a city to pay the cost of necessary inspection of the installation of electrical appliances, inside and outside of buildings in the city, are not taxes within the meaning of this section of the Constitution providing that persons engaged in mechanical and agricultural pursuits shall not be required to pay an occupation tax. *Ex parte Cramer*, 62 Cr. App. 11, 136 S. W. 61.

Acts of Twenty-fifth Legislature, First Called Session, Chapter 18, Article 5049, R. S. 1895, subd. 39, providing that from every person, agency or association of persons dealing in sewing machies. an annual tax of \$15 to the State and \$7 to the county in every county where such business is

carried on, shall be paid, and providing that a merchant who pays an occupation tax as required by the Act shall not be required to pay the separate tax to sell sewing machines when sold in his place of business, and levying a tax of \$3 upon merchants for the State, and \$1.50 for the county, is in violation of this section of the Constitution for inequality and non-uniformity. *Ex parte Bockhorn*, 138 S. W. 706, 62 Cr. App. 652.

The provisions of this section cannot be invoked in the collection of taxes due the State upon real property, for which judgment had been obtained at different times, and sale made under subsequent judgment, without reservation of lien under the former. *City of Houston v. Bartlett*, 29 C. A. 29, 68 S. W. 730; *Alston v. Piper*, 34 C. A. 589, 79 S. W. 357.

This section definitely gives to the Legislature power to impose a poll tax. Art. 11, Sec. 4, authorizing towns and cities incorporated under the general laws to levy for current expenses not to exceed one-fourth of one per cent, has reference to ad valorem taxes, and not intended to operate as denial of the power of such cities and towns to collect poll and other taxes. *Perry v. City of Rockdale*, 62 Tex. 453.

Where the general law of the State provided for the annual levying of \$1.00 for each stall, and \$1.00 for each hack, vehicle, etc., an occupation tax of \$25 on all vehicles for transporting passengers, etc. levied by a city, violated the limitations imposed by this section and was void. *Ex parte Slaren*, 3 Cr. App. 662; *Ex parte Gregory*, 1 Cr. App. 753.

2. Occupation Taxes Shall Be Equal and Uniform—Certain Exemptions.—All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the Legislature may, by general laws, exempt from taxation public property used for public purposes; actual places of religious worship; places of burial not held for private or corporate profit; all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools; also the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages, or in land or other property which has been and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, and institutions of purely public charity; and all laws exempting property from taxation other than the property above mentioned shall be null and void. [Const. Art. 8, Sec. 2.]

The Statute of 1907 of Texas, imposing special licenses on express companies maintaining offices for C. O. D. shipments of intoxicating liquors is an unconstitutional burden or interference with interstate commerce and does not justify an express company accepting such a shipment or refusing to deliver the same; and in this case held that such refusal amounted

to conversion of the goods. *Rosenberger v. Pacific Express Co.*, 241 U. S. 48.

See *Craddock v. Express Co.*, 125 S. W. 60.

NOTE.—“Sec. 2. All occupation shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the Legislature may, by general laws, exempt from taxation public property used for public purposes; actual places of religious worship; places of burial not held for private or corporate profit; all buildings used exclusively and owned by persons or associations of persons for school purposes (and the necessary furniture of all schools), and institutions of purely public charity; and all laws exempting property from taxation, other than the property above mentioned, shall be void.” [Const. 1876.]

Section 1 of this Article definitely empowers the Legislature to impose occupation taxes, and requires that such tax shall be equal and uniform. These provisions do not necessitate equality and uniformity between different classes of occupations, nor do they require the imposition upon every class of the same conditions precedent to their lawful pursuit. The requirement of liquor dealers for a license and of prepayment of the tax for a year does not contravene these provisions, though the same conditions are not imposed upon other occupations. *Fahey v. State*, 27 Cr. App. 146, 11 S. W. 108.

Any one county may, without infringing the provision of this section as to equality and uniformity, levy a larger county tax upon an occupation than that levied upon the same occupation by other counties. *Fahey v. State*, 27 Cr. App. 146, 11 S. W. 108.

Act providing for a levy of an occupation tax upon the sale of the “Illustrated Police Gazette,” and other such publications, is not violative of this section. *Thompson v. State*, 17 Cr. App. 254; *Baldwin v. State*, 3 S. W. 109.

The objection, upon constitutional grounds, is only raised when individuals of a class are singled out for exemption, that the tax levied is not “equal and uniform upon the same class of subjects,” can obtain. *Thompson v. State*, 17 Cr. App. 254; *Baldwin v. State*, 3 S. W. 109.

A municipal tax upon butchers vending meat of \$75 per stall per annum, and collected of butchers vending meat at private stalls only, and not from butchers renting stalls from the city, is unconstitutional for inequality of taxation. *Hoeffing v. City of San Antonio*, 85 Tex. 235, 20 S. W. 85.

Act providing for the levying of occupation tax upon every person, firm or association engaged in banking, does not violate this section for the reason it cannot be enforced against national banks doing a similar business. *Brooks v. State*, 58 S. W. 1032.

An Act imposing an occupation tax for the running of sleeping cars, etc., over the railway of another, while the same Act exempts from its tax the running of such cars over the road of the accredited owner, is not a tax equal and uniform for persons pursuing the same occupation, and is void. *Pullman Co. v. State*, 64 Tex. 274.

The Act of the Twenty-fifth Legislature levying an occupation tax upon peddlers and exempting from its operation persons who are blind, deaf and dumb, wounded persons, also ex-soldiers who are incapacitated to do

manual labor, is unconstitutional. *Ex parte Jones*, 38 Cr. App. 482, 43 S. W. 513.

The Act imposing occupation tax on cotton buyers, and exempting those who pay an occupation tax as merchants, is unconstitutional. *Rainey v. State*, 41 Cr. App. 254, 53 S. W. 882; *Poteet v. State*, 41 Cr. App. 268, 53 S. W. 869.

An Act of the Twenty-fifth Legislature imposing upon peddlers a license tax of \$350, and allowing merchants the right to peddle anywhere in the county by paying a smaller tax, is unconstitutional. *Ex parte Overstreet*, 46 S. W. 825, 39 Cr. App. 474, 46 S. W. 1134.

This section requires uniformity in the imposition of occupation taxes "upon the same class of subjects," and not necessarily upon those pursuing the same class of business, and it is not violated by the levying of an occupation tax on railroad companies which is not levied on other carriers. *State v. G. H. & S. A. Ry.*, 100 Tex. 173, 97 S. W. 71.

Equality does not necessarily require indiscriminate application to all persons as such, but permits classification of subjects of taxation and is satisfied with uniform application to all persons similarly situated. *State v. G. H. & S. A. Ry.*, 100 Tex. 173, 97 S. W. 71.

Said Act, held to impose, however, so far as companies whose receipts from interstate business is concerned, a burden on interstate commerce, and therefore is violative of the Commerce Clause of the Federal Constitution. *G. H. & S. A. Ry. v. Texas*, 210 U. S. 217.

The gross receipts of occupation tax Act of 1905, Chap. 141, is not enforceable against a railway incorporated under an Act of Congress. *State v. Texas & Pac. Ry.*, 98 S. W. 834, 17 Tex. Ct. Rep. 328.

Still this does not bring the statute into conflict with this section requiring all occupation taxes to be equal and uniform upon the same class of subjects within the limits of the authority levying the tax. *State v. M. K. & T. Ry.*, 100 S. W. 146.

The Act of 1905, Chap. 148, Sec. 13, imposing on corporations and persons operating oil wells, applies to any corporation or persons engaged in said business and is equal and uniform. *Producers Oil Co. v. Stephens*, 99 S. W. 158, 44 C. A. 327; *The Texas Co. v. Stephens*, 100 Tex. 628, 103 S. W. 481.

The Legislature has the power to classify subjects of taxation; and the courts can interfere only when it is clearly shown that an attempted classification has no reasonable basis in the nature of the business classified and that the law operates unequal upon subjects between which there is no real difference to justify a separate treatment. *The Texas Co. v. Stephens*, 100 Tex. 640, 103 S. W. 481.

Where, only as a method or basis to arrive at the amount of tax to be charged upon the occupation of transporting oil for hire, a pipe-line company is required to include in its reports of the amount of oil transported the amount of its own oil as well as that transported for others, the law is not held as unconstitutional as imposing a tax upon such companies which is not imposed upon others for transporting their own oil. *The Texas Co. v. Stephens*, 100 Tex. 640, 103 S. W. 481.

The Act of Feb. 12, 1907, which imposes an occupation tax of \$5,000 upon c. o. d. shipments of liquor, does not violate this section requiring all occupation taxes to be equal and uniform upon the same class of subjects, etc., as the delivery of liquor c. o. d. constitutes a business within

itself. *Craddock v. Express Co.*, 125 S. W. 60. But the United States Supreme Court has since declared this law unconstitutional. *Rosenberger v. Pacific Express Co.*, 241 U. S. 48.

The Act of 1907 which levies an occupation tax of \$2,000 on the sale of non-intoxicating malt liquors in local option territory, and exempts druggists from the operation of the Act, is unconstitutional. *Ex parte Woods*, 52 Cr. App. 575, 108 S. W. 1171.

The Act requiring liquor dealers to pay occupation tax for one year in advance, while persons pursuing different occupations are permitted to pay quarterly, is constitutional. *Fahey v. State*, 57 Cr. App. 160, 11 S. W. 108.

The language "all occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax," means that State taxes must be equal and uniform throughout the State as applied to all taxes levied for State use by the Legislature, and applying to counties, cities and towns, such authority is co-extensive with their respective boundaries. *Fahey v. State*, 27 Cr. App. 146, 11 S. W. 108; *Ex parte Woods*, 52 Cr. App. 578, 108 S. W. 1171.

An Act imposing occupation tax upon photographers in this State, though agents for a foreign house may pursue the same occupation and are not amenable to the tax under the Interstate Commerce provision of the United States Constitution, is constitutional. *Mullinix v. State*, 42 Cr. App. 527, 60 S. W. 768.

The tax statute imposing occupation tax upon traveling salesmen of patent or other medicines, and exempting from its operation salesmen of wholesale drug houses, is not violative of this section. *Needham v. State*, 51 Cr. App. 249, 103 S. W. 857; *Huffman v. State*, 55 Cr. App. 144, 115 S. W. 578.

The language "all occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax," is as binding in case of occupation taxes levied by a municipal corporation as in such taxation levied by the State. *Hoefling v. City of San Antonio*, 85 Tex. 228, 20 S. W. 85.

Private boarding schools are not "public property used for public purposes," within the constitutional exemption from taxation. *St. Edward's College v. Morris*, 82 Tex. 1, 17 S. W. 512.

This clause has reference only to property owned by the State or its municipal subdivisions. *St. Edward's College v. Morris*, 82 Tex. 1, 17 S. W. 512.

This section merely places a limitation upon the power of the Legislature to exempt property from taxation, but does not exempt from taxation. *St. Edward's College v. Morris*, 82 Tex. 1, 17 S. W. 512.

Limitation of exemption to "buildings used exclusively and owned by persons or associations of persons, for school purposes" does not permit the exemption from taxation of land belonging to a school which is used and cultivated for the purpose of supplying the table of such school, even though it is contiguous and connected therewith. *St. Edward's College v. Morris*, 82 Tex. 1, 17 S. W. 512.

Where school buildings are exempted from taxation it includes the grounds for the recreation of students. *Casiano v. Ursuline Academy*, 64 Tex. 673; *Red v. Morris*, 72 Tex. 555, 10 S. W. 682.

Property is used "exclusively for school purposes" when used solely by the owners for the purpose of keeping a school upon it and receive no

direct profit from it. Premises owned by four persons, three of whom occupy the place and use it for keeping a school, and the other owner taking no profit, the premises are not subject to taxation. *Red v. Morris*, 72 Tex. 555, 10 S. W. 682.

Masonic Temple, where the third story is used for Masonic Lodge to meet in, the lower stories of which are rented by the Masonic Order, and if the proceeds are appropriated to purposes of charity, is not an institution of purely public charity within the meaning of this section, and therefore not exempt from taxation. *Morris v. Masons*, 68 Tex. 705, 5 S. W. 522.

Where an attorney occupies premises as a homestead, though his wife teach a school therein, are not entitled to exemption as a "building used exclusively for school purposes." *Edmonds v. City of San Antonio*, 14 C. A. 155, 36 S. W. 495.

Where school house is used and occupied for boarding school but in which the owner resides with his family, is not exempt from taxation. *Red v. Johnson*, 53 Tex. 284; *City of San Antonio v. Seeley*, 57 S. W. 688.

The exemption "all institutions of purely public charity" applies to real estate with the buildings thereon, which is owned and used exclusively for charitable purposes. *Morris v. Masons*, 68 Tex. 698, 5 S. W. 522; *Barbee v. City of Dallas*, 26 C. A. 573, 64 S. W. 1019.

Books and periodicals which are handled for sale by a church publishing house are not exempt from taxation, even though the proceeds are devoted exclusively to the support of superannuated ministers, etc. *Barbee v. City of Dallas*, 26 C. A. 571, 64 S. W. 1019, 3 Tex. Ct. Rep. 257.

The assumption on the part of a city to exempt property from taxation which otherwise would be subject to taxation is ultra vires and void. *City of Austin v. Austin Gas, etc., Co.*, 69 Tex. 180; *Altgeld v. City of San Antonio*, 17 S. W. 75; *City of Dallas v. St. Ry.*, 95 Tex. 278, 66 S. W. 835.

The power to commute taxes is but an incident of the power to exempt. When the power to exempt does not exist then the power to commute cannot be exercised. *City of Austin v. Austin Gas, etc., Co.*, 69 Tex. 180; *City of Dallas v. St. Ry.*, 95 Tex. 278, 66 S. W. 835.

The exemptions that are contained in this section embrace all taxation, special as well as general. *County of Harris v. Boyd*, 70 Tex. 237, 7 S. W. 713.

The action of a city council in assessing taxes against the county court house site, and in attempting to bind the county for its payment, is inhibited by this section. *County of Harris v. Boyd*, 70 Tex. 237, 7 S. W. 713. Enumeration of the exemptions contained in this section cannot be construed to subject to taxation all property not so specified therein. The section only indicates the character of things and the uses to which they must be appropriated in order to entitle them to exemption. *Galveston Wharf Co. v. City of Galveston*, 63 Tex. 14.

The exemption of sleeping, dining and palace car companies from the operation of the intangible assets tax law, which provides for the assessment and collection of a tax upon the intangible assets of railway companies, does not violate this section. *M. K. & T. Ry. v. Shannon*, 100 Tex. 395, 100 S. W. 138.

An Act which limits the right to hold a license to take oysters on the public beds and reefs of the State to residents and taxpayers of the State of Texas, which levies an occupation tax therefor, is unconstitutional.

Gustafson v. State, 40 Cr. App. 67, 48 S. W. 518; *Bolen v. State*, 48 S. W. 1118.

An Act of 1905 imposing an annual occupation tax of \$5,000 on persons engaged in the business of purchasing assignments of unearned wages, and exempting therefrom persons who procure such assignments in payment for the necessities of life, etc., places a tax upon a class and exempts other classes, and is violative of this section, as well as the Fourteenth Amendment to the Constitution of the United States. *Owens v. State*, 53 Cr. App. 105, 112 S. W. 1076.

The Act of 1905 imposing on railroad companies a tax equal to one per cent of their gross receipts from all sources whatsoever, is not an occupation tax, but a property tax. *G. H. & S. A. Ry. v. Davidson*, 93 S. W. 455.

This Act, however, is violative of the Interstate Commerce Clause of the Federal Constitution. *G. H. & S. A. Ry. v. State*, 210 U. S. 217; (reversing 100 Tex. 153, 97 S. W. 71.)

The law empowering defendants to plead limitation in pending suits by a city for taxes due more than four years before suit begun, is violative of this section. *Ollivier v. City of Houston*, 22 C. A. 55, 54 S. W. 940, 93 Tex. 209; *City of Houston v. Stewart*, 40 C. A. 499, 90 S. W. 49; see, also *Link v. City of Houston*, 59 S. W. 566; *Link v. City of Houston*, 94 Tex. 378, 60 S. W. 664.

The amount and character of property exempt from taxation is fixed by this section and cannot be increased or extended by legislative act. *Ollivier v. City of Houston*, 22 C. A. 55, 54 S. W. 940, 93 Tex. 209.

The Act of 1897 levying an annual occupation tax of \$10.00 upon photograph galleries within this State, is not violative of this section for the reason that agents of houses situated in other States, with no place of business in Texas, who solicit orders for such foreign houses, cannot be taxed. The tax being equal and uniform upon those carrying on such trade within its borders. *Mullinix v. State*, 60 S. W. 768, 42 Cr. App. 526.

The Act of the Twenty-fifth Legislature in imposing on every "dealer" in lightning rods an annual tax to the State of \$36, and to the county \$18, also on every person "canvassing for the sale" of lightning rods an annual tax to the State of \$100, and to the county \$50, is not unequal and uniform taxation upon the same class of subjects. *Caml. v. State*, 61 Cr. App. 231, 135 S. W. 146.

Acts of the Twenty-fifth Legislature, First Called Session, Chapter 18, Article 5049 R. S., 1895, Subd. 39, provides that from every person, agency or association of persons dealing in sewing machines, an annual tax of \$15 to the State, and to the county \$7, in every county where such business is carried on, shall be paid, and provides that a merchant who pays an occupation tax as required by the Act shall not be required to pay the special tax to sell sewing machines when sold in his place of business, and levying a tax of \$3 upon merchants for the State, and for the county a tax of \$1.50, is in violation of this section of the Constitution for inequality and non-uniformity. *Ex parte Bockhorn*, 138 S. W. 706, 62 Cr. App. 652.

The Acts of Thirty-first Legislature, Ch. 20, imposes a tax upon the occupation of taking orders for sale of intoxicating liquors in counties adopting the local option or prohibition law, but does not contravene this section of the Constitution requiring all occupations to be equal and uni-

form on the same class of persons within the limits of the authority levying the tax. *Edmanson v. State*, 142 S. W. 888.

Acts of the Thirty-first Legislature, Ch. 20, taxing the occupation of securing orders for the sale of intoxicating liquors in counties adopting the local option law, is not constitutional as levying an excessive tax upon the occupation. *Edmanson v. State*, 142 S. W. 888.

The Act of the Thirty-first Legislature, Ch. 19, prohibiting the pursuit of the occupation of selling malt liquors not containing enough alcohol to produce intoxication without procuring a license and paying an annual State tax of \$2,000, and a municipal tax of \$1,000, etc., is a valid exercise of the State's police power, and not invalid as imposing a prohibitive tax. *Ex parte Townsend*, 144 S. W. 629.

An Act of Thirty-first Legislature, Ch. 19, prohibits the occupation of the pursuit of selling non-intoxicating malt liquors without first procuring a license and without payment of State and municipal taxes, is not invalid as imposing different rates in different parts of the State from those established by the Robertson-Fitzhugh Law. *Ex parte Townsend*, 144 S. W. 629.

An Act of the Thirtieth Legislature imposing a tax of 50 per cent of the gross receipts of the sales of pistols, is a valid exercise of the police power. *Caswell & Smith v. State*, 148 S. W. 1160.

Under this section, an Act of the Legislature imposing an annual occupation tax upon each person or firm dealing in stocks or bills of exchange in a city or town exceeding 5,000 in population, of \$250, and in cities and towns of less population \$50, is authorized. *Texas Banking & Ins. Co. v. State*, 42 Tex. 636.

3. Taxes Shall Be Levied by General Law for Public Purposes.—
Taxes shall be levied and collected by general laws and for public purposes only. [Const. Art. 8, Sec. 3.]

Constitution Art. 8, Sec. 3, is not violated by Act of Thirty-third Legislature, Ch. 39, Sec. 34, which provides for the payment of election officers at primary elections. *Beene v. Waples* (Sup), 187 S. W. 191.

No taxes can be levied only by general law and for the public use and purposes. (Const. 1869, Art. XII, Sec. 19.)

The Act of 1876 appropriating "dog tax" to the county free schools does not violate this section prohibiting the Legislature from applying to public schools more than one-fourth of the general revenue and a poll tax of \$1. This provision limits the legislative power over the general revenue and the poll tax, but not its exercise to augment the school fund from other sources than these. *Ex parte Cooper*, 3 Cr. App. 489.

A city charter authorizing special assessments for street improvements is not violative of this section. *Taylor v. Boyd*, 63 Tex. 539.

Article XI, Section 5, of the Constitution excepts from the operation of this section cities of 10,000 inhabitants operating under special charter. Such cities can collect a greater tax than those incorporated under the general law; and any one of such cities may authorize the levy of a heavier tax than another of the same kind. *Cave v. City of Houston*, 65 Tex. 621.

Any city ordinance prescribing that all city taxes shall bear interest

from the respective dates on which they may, by ordinance, be made payable, does not violate this section. *G. & W. Ry. v. City of Galveston*, 96 Tex. 525, 74 S. W. 537; (affirmed 33 C. A. 386, 77 S. W. 270).

An Act of 1891 provides for the payment out of the county treasury of bounties for the destruction of wolves, is a general law, its purpose public, and does not violate this section. *Weaver v. Scurry County*, 28 S. W. 836.

4. Power to Tax Corporations.—The power to tax corporations and corporate property shall not be surrendered or suspended by act of the Legislature, by any contract or grant to which the State shall be a party. [Const. Art. 8, Sec. 4.]

The fact that a foreign corporation has obtained a permit to do business in this State under an existing statute, and has paid the franchise tax required thereby, does not preclude the State from imposing a further franchise tax, and any such change does not violate the constitutional provision prohibiting the impairment of contracts, especially in view of this section providing that the power to tax corporations shall not be suspended by contracts. *Gaar-Scott & Co. v. Shannon*, 115 S. W. 361.

5. Railroad Property Subject to City Taxes.—All property of railroad companies, of whatever description, lying or being within the limits of any city or incorporated town within this State, shall bear its proportionate share of municipal taxation; and, if any such property shall not have been heretofore rendered, the authorities of the city or town, within which it lies, shall have power to require its rendition, and collect the usual municipal tax thereon, as on other property lying within said municipality. [Const. Art. 8, Sec. 5.]

Any board of appeal, created by city charter, to hear grievances as to assessments made by the assessor, etc., has no power to add a franchise of a railroad company to the list of its property, because of the company's and assessor's failure to list it. *St. Ry. Co. v. City of San Antonio*, 22 C. A. 341, 54 S. W. 907.

Under this section of the Constitution a city which contains the principal office of a railroad company was not, for that reason, authorized to levy municipal taxes on the entire rolling stock of the railroads, only a small portion of which would necessarily be within the city on the first day of January of each year. *City of Tyler v. Coker*, 124 S. W. 729.

The term "lying or being within the limits of any city or incorporated town," etc., as applying to tangible movable property, means only such property as is actually and physically within the limits of the city. *City of Tyler v. Coker*, 124 S. W. 729.

6. Method of Making Appropriations.—No money shall be drawn from the treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer

term than two years, except by the first Legislature to assemble under this Constitution, which may make the necessary appropriations to carry on the government until the assemblage of the Sixteenth Legislature. [Const. Art. 8, Sec. 6.]

No money shall be drawn from the treasury but in pursuance of a specific appropriation made by law; nor shall any appropriation of money be made for a longer term than two years, except for purposes of education; and no appropriation for private or individual purposes, or purposes of internal improvement, shall be made, without the concurrence of two-thirds of both houses of the Legislature. A regular statement and account of the receipts and expenditures of all public money shall be published annually in such manner as shall be provided by law; and in no case shall the Legislature have the power to issue "treasury warrants," "treasury notes," or paper of any description intended to circulate as money. Const. 1845, 1861, Art. 7, Sec. 8; Const. 1869, Art. 12, Sec. 6.

This section of the Constitution prohibits the payment of money out of the State Treasury without a specific appropriation made by law; and, in case of a fraudulent purchase of school lands, the State need not tender repayment of purchase money. *State v. Snyder*, 66 Tex. 687, 18 S. W. 106.

Evidently the Legislature intended that the suits directed to be brought should not only be instituted, but that they should be heard and determined without the return or offer to return such sums as parties against whom suits might be brought had paid into the treasury of the State. *State v. Snyder*, 66 Tex. 687, 18 S. W. 106.

Art. 1012, R. S. 1895, which creates the office of a stenographer for the Court of Civil Appeals and fixing salary, does not constitute an appropriation of the amount so fixed; and where the Legislature provided a less amount than that named in said article, the Comptroller cannot be compelled, by mandamus, to issue warrant for amount named in said article. *Pickle v. Finley*, 91 Tex. 484, 44 S. W. 480.

This section not only requires an appropriation before any money can be paid out of the treasury, but also limits every appropriation to the term of two years. An appropriation for a longer term might be good as an appropriation for two years, but if a law fixes a salary for an indefinite time it will not be construed as intending an appropriation when by such construction it would violate this provision of the Constitution. *Pickle v. Finley*, 91 Tex. 484, 44 S. W. 480.

An Act of the Thirty-first Legislature, 1909, making an appropriation of \$25,000 to the Attorney General's Department "for the purpose of enforcing any and all laws of the State of Texas, and for the purpose of paying any and all necessary expenses in bringing suits or paying expenses in prosecuting same," is sufficiently specific to permit the employment by the Attorney General, upon the approval of the Governor, of special counsel to assist the Attorney General in the performance of the duties imposed by the Act. *Terrell v. Sparks*, 135 S. W. 519.

Such employment did not constitute the special counsel thus employed an officer of the State, and, though the period of such employment was to extend beyond the terms of office, respectively, of the then Governor and Attorney General, was not violative of the clause of this section providing

that no appropriation of money shall be made for a longer term than two years. *Terrell v. Sparks*, 135 S. W. 519, 104 Tex.

The issuance of a warrant by the Comptroller is not a payment or withdrawal from the Treasury; and, though there was no specific appropriation for the payment of the salary of the Attorney General, mandamus will lie to compel the Comptroller to issue warrant to such officer. *Lightfoot v. Lane*, 140 S. W. 89.

The Comptroller could not refuse a warrant for the salary of the Attorney General, although the appropriation for the payment of same was vetoed by the Governor, the Comptroller's duty being purely ministerial, Article 4854, R. S. 1895, is mandatory. *Lightfoot v. Lane*, 140 S. W. 89; *Fulmore v. Lane*, 140 S. W. 405.

It is made clear, under this section of the Constitution, that the Legislature had the power to make, in a single item, an appropriation for the Attorney General's Department for a full period of two years. *Fulmore v. Lane*, 140 S. W. 419.

7. Appropriations Not to Be Diverted.—The Legislature shall not have power to borrow, or in any manner divert from its purpose, any special fund that may or ought to come into the treasury; and shall make it penal for any person or persons to borrow, withhold or in any manner to divert from its purpose, any special fund, or any part thereof. [Const. Art. 8, Sec. 7.]

NOTE.—See Art. 104, Revised Penal Code, for provisions and penalty.—Editor.

See, also, R. S. Arts. 2402a to 2402c, under Title 42, relating to Public Debt, as to improper diversion of funds.

8. Method of Assessing Railroad Property, and Where.—All property of railroad companies shall be assessed, and the taxes collected in the several counties in which said property is situated, including so much of the roadbed and fixtures as shall be in each county. The rolling stock may be assessed in gross in the county where the principal office of the company is located; and the county tax paid upon it shall be apportioned by the Comptroller, in proportion to the distance such road may run through any such county, among the several counties through which the road passes, as a part of their tax assets. [Const. Art. 8, Sec. 8.]

The Act of 1905 requiring the valuation of the "intangible assets" of railway companies by a State Tax Board is not in contravention of this section requiring railroad property to be assessed in the county in which it is situated. *M. K. & T. Ry. v. Shannon*, 100 Tex. 389, 100 S. W. 138; *Lively v. M. K. & T. Ry.*, 100 Tex. 557, 120 S. W. 852 (affirming 97 S. W. 527).

Under Sections 5 and 8 of this Article, a city can tax only tangible movable property of a railroad as may be physically within the limits of the city on the first day of January. *City of Tyler v. Coker*, 124 S. W. 729.

9. Limitation on Rate of Taxation.—The State tax on property, exclusive of the tax necessary to pay the public debt, and of the

taxes provided for the benefit of the public free schools, shall never exceed thirty-five cents on the one hundred dollars valuation; and no county, city or town shall levy more than twenty-five cents for city or county purposes, and not exceeding fifteen cents for roads and bridges, and not exceeding fifteen cents to pay jurors, on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment September 25, 1883; and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation, in any one year, and except as is in this Constitution otherwise provided; and the Legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads; provided, that a majority of the qualified property taxpaying voters of the county, voting at an election to be held for that purpose, shall vote such tax, not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation in such county. And the Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws. [Const. Art. 8, Sec. 9, adopted 1906.]

Sec. 9. The State tax on property, exclusive of the tax necessary to pay the public debt, shall never exceed fifty cents on the one hundred dollars valuation; and no county, city or town shall levy more than one-half of said State tax, except for the payment of debts already incurred, and for the erection of public buildings, not to exceed fifty cents on the one hundred dollars in any one year, and except as in this constitution is otherwise provided. [Const. 1876.]

Sec. 9. The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of public free schools, shall never exceed thirty-five cents on the one hundred dollars valuation; and no county, city or town shall levy more than thirty-five cents for city or county purposes, and not to exceed fifteen cents for roads and bridges on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of this amendment, and for the erection of public buildings, street, sewer and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and except as is in this constitution otherwise provided. [Section 9, Art. 8, adopted election August 14, 1883; proclamation September 25, 1883.]

Sec. 9. The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of public free schools, shall never exceed thirty-five cents on the one hundred dollars valuation; and no county, city or town shall levy more than twenty-five cents for city or county purposes, and not exceed fifteen cents for roads and bridges on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment, September 25, A. D. 1883; and for the erection of public buildings, streets, sewers, water-

works and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and except as is in this constitution otherwise provided; and the legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads; provided that a majority of the qualified property taxpaying voters of the county, voting at an election to be held for that purpose, shall vote such tax, not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation in such county. And the Legislature may pass local laws for the maintenance of public roads and highways without the local notice required for special or local laws. Sec. 9, Art. 8, adopted election November 4, 1890; proclamation, December 19, 1890.

NOTE.—Neither of the Constitutions of 1845, 1861, 1866 nor that of 1869, fixed the limit of the tax rate for the State, county or municipal purposes, but it was left to the discretion of the Legislature, the provisions of each of said Constitutions, in this regard, being almost, if not identical, and declaring, in substance, that taxation shall be equal and uniform throughout the State, and that all property in this State shall be taxed in proportion to its value, to be ascertained as directed by law.

The question as to how much tax should be levied to pay the indebtedness of a county incurred prior to its adoption was left by this section to the discretion of the Legislature and the County Commissioners' Court. *Dean v. Lufkin*, 54 Tex. 265.

If a county has exhausted its taxing power, except for the purpose of raising money to pay indebtedness incurred prior to the adoption of this section, a levy for the purpose of paying both such indebtedness and also indebtedness arising after the adoption of this section, is void. This is true, even though the entire levy is needed to pay the indebtedness existing when the section was adopted and is in fact being used for that purpose. *Dean v. Lufkin*, 54 Tex. 265.

Limitation of the taxing power to 50 cents on the \$100.00 valuation, as applied to counties, cities and towns, has reference to taxation for the erection of public buildings, and does not apply to the taxation to pay debts incurred prior to the adoption of the Constitution. *T. & P. Ry. Co. v. Harrison Co.*, 54 Tex. 124; *Bagby v. Bateman*, 50 Tex. 446; *Dean v. Lufkin*, 54 Tex. 270.

The original adoption of this section was a limitation upon the power of a city, as an independent school district, to levy a tax for school purposes in addition to that prescribed for general city purposes. *City of Fort Worth v. Davis*, 57 Tex. 234.

Where the term "erection of public buildings" is used it includes repairs of and additions to old buildings. *Brown v. Graham*, 58 Tex. 254.

The object of this provision of the Constitution and the statutes enacted thereunder authorizing the levy of a tax for public buildings, was in order to enable the different counties to provide suitable public edifices for the people, and leave it to the proper authorities to determine whether this could best be done by erecting new houses or repairing and adding to old ones. *Brown v. Graham*, 58 Tex. 254.

This section authorizes the levy of a tax for the erection of public buildings, but at the same time it does not imply a power in the commissioners' court to issue bonds of the county and borrow money for such purpose. This section, however, does not prohibit the Legislature from

granting such power, but this power is limited to cases expressly provided by law. *Robertson v. Breedlove*, 61 Tex. 316; (*Distinguishing Looney v. City of Galveston*, 54 Tex. 517); *Nolan County v. State*, 83 Tex. 193, 17 S. W. 823; *Francis v. Howard County*, 50 Fed. Rep. 54.

Construing Art. 420, R. S., and original Section 9 of Art. 8, and Art. 11, Sec. 4 of the Constitution, where a city is incorporated under the general law, it did not have the power to levy an annual tax exceeding one fourth of one per cent "except for the payment of debts already incurred," and "for the erection of public buildings." *Gould v. City of Paris*, 68 Tex. 518, 4 S. W. 653; *Water & Gas Co. v. City of Cleburne*, 1 C. A. 587, 21 S. W. 393.

The "construction of a system of water works" does not come within the description of either of these purposes, and a contract made with the city for such construction, which contemplated the levy by the city of a tax in excess of one-fourth of one per cent allowed for "current expenses" was void. *Water & Gas Co. v. City of Cleburne*, 1 C. A. 587, 21 S. W. 393.

The Amendment of 1883, to this section, as amended, would seem merely intended as a limitation of the extent of taxation, instead of a self-executing grant of power. The power as conferred upon cities to buy grounds and build school houses, does not empower them to borrow money and create a debt without limit. *Waxahachie v. Brown*, 67 Tex. 526, 4 S. W. 207.

This section, concerning taxes permitted to be levied by cities and towns of 10,000 inhabitants and over, is superseded by Article 11, Sec. 5; and such cities may levy ad valorem taxes to the extent of two and one-half per cent, when authorized by the Legislature. *Lufkin v. City of Galveston*, 63 Tex. 437; *Muller v. City of Denison*, 1 C. A. 293, 21 S. W. 392; *Cave v. City of Houston*, 65 Tex. 621.

Under Article 11, Sec. 5, the city of Galveston had authority to levy 99c on the \$100 for municipal purposes, and 7c on the \$100 for emergency fund. *Lufkin v. City of Galveston*, 63 Tex. 437.

Where the language is used "county or city purposes" it applies to all such public purposes as may form the object of ad valorem municipal taxation. *Lufkin v. City of Galveston*, 63 Tex. 437.

The object of special assessments for city improvements contemplate, at least in theory, a local benefit and increase of value, and are made under the power to tax—are an exercise of that power. These special taxes do not come within the meaning of the term "taxation" as usually employed in the Constitution and statutes. The limitations in this article of the Constitution held not to apply to the exactions by city authorities under their charters to construct and repair sidewalks, streets, etc., as against abutting owners. *County of Harris v. Boyd*, 70 Tex. 241, 7 S. W. 713; *Roundtree v. City of Galveston*, 42 Tex. 612; *Taylor v. Boyd*, 63 Tex. 533; *Higgins v. Bordages*, 88 Tex. 460, 31 S. W. 52; *Nalle v. City of Austin*, 103 S. W. 825; *City of Austin v. Nalle*, 120 S. W. 996.

The power of a city to levy special assessments, however, does not extend to the levy of an assessment against a county court house site, this being public property and exempt under Article 11, Sec. 9, of the Constitution. *County of Harris v. Boyd*, 70 Tex. 241, 7 S. W. 713.

Where bonds issued by a city require a levy in excess of the constitutional limit of one-fourth of one per cent, as prescribed by this section and Section 4 of Article 11, are void as to such excess. *Citizens Bank v. City*

of Terrell, 78 Tex. 455, 14 S. W. 1003; *Peck v. City of Hempstead*, 27 C. A. 80, 65 S. W. 653; *City of Columbus v. Woonsocket, etc.*, 114 Fed. Rep. 162.

Purchasers of such bonds must take notice of the assessment for taxes, and cannot rely on recitals in the bonds as to a compliance with Article 11, Sections 5 and 7, which requires that provision be made for payment of interest and the creation of sinking fund. *Citizens Bank v. City of Terrell*, 78 Tex. 455, 14 S. W. 1003. To the same effect, see: *Nolan Co. v. State*, 83 Tex. 183, 17 S. W. 823; *Francis v. Howard County*, 50 Fed. Rep. 44; *Quaker City National Bank v. Nolan Co.*, 59 Fed. Rep. 668.

If bonds are issued in excess of the constitutional limitation, those first delivered should be paid in the order of delivery until the limit is reached, and the rest treated as nullities; and if there is no priority of delivery, the amount of the valid debt should be prorated among them. *Citizens Bank v. City of Terrell*, 78 Tex. 455, 14 S. W. 1003; *Rockwall County v. Roberts County*, 128 S. W. 370; *Francis v. Howard County*, 50 Fed. Rep. 44.

Where the word "valuation" is used in this section, it means the value as fixed by competent authority for the purposes of taxation. *Citizens Bank v. City of Terrell*, 78 Tex. 450, 14 S. W. 1003; *Nolan County v. State*, 83 Tex. 195, 17 S. W. 823; *Rockwall County v. Roberts County*, 128 S. W. 369; *Morrill v. Smith County*, 89 Tex. 549, 36 S. W. 59; *Francis v. Howard County*, 50 Fed. Rep. 58.

When the amount of indebtedness which a county can lawfully create for erecting public buildings is determined, the value of property in a county attached thereto for temporary purposes cannot be taken into the calculation. *Nolan County v. State*, 83 Tex. 197, 17 S. W. 823.

The amount of indebtedness which counties, cities and towns, were authorized, under this amendment, to create for the purpose of the erection of public buildings, was limited to such amount that its interest and sinking fund could be paid by a tax of 25c upon the \$100 of property as shown by the assessment rolls of the municipality. *Nolan County v. State*, 83 Tex. 197, 17 S. W. 823.

When bonds are issued in payment of real indebtedness, payable to bearer and in the hands of a bona fide holder, and in excess of the amount that can be legally issued, they are valid pro rata to the extent of the indebtedness that can be legally created. *Nolan County v. State*, 83 Tex. 197, 17 S. W. 823.

Within the power to levy a tax for "roads and bridges" is included "streets," since this provision is for the current expense of maintenance of streets; while "streets" as included in the power to levy 25c for "the erection of public buildings, streets, sewers, water works, and other permanent improvements," means streets that are acquired or opened up by condemnation or otherwise, and not the keeping of the same in repair. *Sandmeyer v. Harris*, 7 C. A. 519, 27 S. W. 284.

If the power of a city to levy taxes for improvement purposes has not been exhausted, mandamus will lie to compel the levying of a tax to satisfy judgment against it. *Sandmeyer v. Harris*, 7 C. A. 519, 27 S. W. 284; *City of San Antonio v. Routledge*, 102 S. W. 756.

There is no reason why current improvements may not be paid for with current revenue; and no reason why the phrase "current expenses" as used in Article 11, Section 4, even though used with reference to "general purposes," should be limited to liabilities incurred in respect to other funds, when the improvements are made to be paid for in the ordinary course,

without postponement to future tax levies. *Sandmeyer v. Harris*, 7 C. A. 519, 27 S. W. 284.

This section (amendment of 1883), did not prohibit the commissioners' court from levying, under Act of 1889, an annual tax to meet principal and interest of bonds issued for funding general county indebtedness, though such levy by consuming a part of the 25c on the \$100 valuation permitted to be levied for "county purposes" impaired to that extent the power to make future annual levies for meeting the necessary current expenses of the county, as the debts so funded were already payable out of taxes to be levied for county purposes. *Cass County v. Wilbarger County*, 25 C. A. 56, 60 S. W. 988.

It has been suggested and discussed, though not authoritatively determined, whether, under this section, a county may be empowered to levy a tax for meeting its past indebtedness, in addition to the 25c on the \$100 permitted to be levied for county purposes. *Cass County v. Wilbarger County*, 25 C. A. 56, 60 S. W. 988.

If a debt is void in its inception for want of authority to create it, no subsequent ratification of it by the collection of taxes or otherwise can give it any validity; neither can there be any such thing as a bona fide holder of the obligations with a right to collect them, notwithstanding the want of power to create the debt. *Citizens Bank v. City of Terrell*, 78 Tex. 450, 14 S. W. 1003; *City of Tyler v. Loan Assn.*, 82 S. W. 1068.

Special assessments not taxes.—If a sidewalk improvement is a tax authorized by the Constitution, it must be embraced in the provision for streets, is limited in amount to 25c on the \$100, and must be levied as an ad valorem tax. If the assessment is not included in the language "tax for all purposes," then it is not a tax within the meaning of that word as used in any part of the Constitution. *Higgins v. Bordages*, 88 Tex. 460, 31 S. W. 52, 803.

Lufkin v. City of Galveston, 58 Tex. 545, overruled, as far as it holds the homestead liable to forced sale for city assessments, streets, sidewalks, etc. *Higgins v. Bordages*, 88 Tex. 458, 31 S. W. 52, 803.

This section and Sections 2 and 7 of Article 11 are self-executing, in the sense that all laws in conflict therewith are void, but do not in themselves authorize the levy of a tax. All municipal corporations must derive this authority from the Legislature. *Mitchell County v. Bank*, 91 Tex. 361, 43 S. W. 880; *Waxahachie v. Brown*, 67 Tex. 526.

This section confers no authority upon any officer to levy a tax for any purpose, but by the language "no county, city or town shall levy more than one-half of said State tax * * * and for the erection of public buildings not to exceed 50c on the \$100 in any one year," places a limitation upon the power of the Legislature to authorize counties to impose a tax for such purposes. *Mitchell County v. Bank*, 91 Tex. 361, 43 S. W. 880.

The authority is granted the Legislature, subject to the limitations of this section, to confer upon counties the power to issue bonds for the construction of bridges, court house or jail, and to make provision for their payment. *Mitchell County v. Bank*, 91 Tex. 361, 43 S. W. 880.

The phrase "maintenance of public roads" used in this section authorizing the Legislature to pass local laws for such purpose, includes the laying out, opening and construction of new roads as well as the repairing of those already laid out. *Dallas County v. Plowman*, 99 Tex. 512, 91 S. W. 221; *Smith v. Grayson County*, 18 C. A. 153, 44 S. W. 921.

The use of the word "maintenance" as used in this amendment, is not restricted as in Article 3, Sec. 56, subdivision 5, to the keeping up of roads as distinguished from the laying out and opening them, neither is it confined to its narrow and literal construction; but it must be held to embrace all the things necessary to accomplish the obvious purpose of the amendment, including the opening as well as repair of roads. *Dallas v. Plowman*, 99 Tex. 512, 91 S. W. 221.

As amended, this section had for its purpose the conferring upon counties the power to lay out, construct and maintain better public highways than under the restricted right to tax, as provided before the amendment, and it would be a narrow interpretation to hold that the intention was only to provide for a fund to repair roads already laid out. *Dallas County v. Plowman*, 99 Tex. 512, 91 S. W. 221.

The tax of one per cent upon the gross earnings of railroads, if considered as an ad valorem tax, would be violative of this section declaring that no more than 35c on the \$100.00 of its value shall be levied upon property, etc. Said tax held to be an occupation tax. *State v. G. H. & S. A. Ry. Co.*, 100 Tex. 168, 97 S. W. 71.

NOTE.—This statute held to be violative of the Interstate Commerce Clause of the Federal Constitution. *State v. G. H. & S. A. Ry. Co.*, 210 U. S. 217.

A city can issue bonds only to the extent that a tax of one-fourth of one per cent upon the value of all property subject to taxation, annually collected, will pay the interest on the bonds, also create a sinking fund sufficiently to pay the bonds at the date of their maturity; and this applies to cities of over 10,000 inhabitants as well as those of a population under 10,000. *City of Palestine v. Royall*, 16 C. A. 36, 40 S. W. 621.

An assessment upon a homestead of a tax in excess of the amount permitted by this section of the Constitution is void, and the homestead cannot be sold to force payment, as such erroneous assessment is not a tax due thereon as contemplated in Section 50 of Art. 16. *Hays v. Taylor*, 17 C. A. 450, 43 S. W. 314.

Art. 11, Sec. 2, provides that the laying out, constructing and repairing of county roads shall be provided for by general law; Art. 3, Sec. 57, provides that no local or special law shall be passed unless notice of intention to apply therefor shall have first been published in the locality. This section expressly authorizes the passage of local laws for the maintenance of public roads and highways without the notice required for local or special laws, and is controlling. *Smith v. Grayson County*, 18 C. A. 153, 44 S. W. 921.

This section is an exception to the provisions of Art. 3, Sec. 56, permitting the Legislature to pass local laws for the maintenance of public roads and highways without the local notice required for local or special laws. *Smith v. Grayson County*, 18 C. A. 153, 44 S. W. 921; *Young v. State*, 51 Cr. App. 102 S. W. 117.

The proviso of this section (amendment of 1890) which has reference to the submission to the voters of the county of the question of levying a tax of 15c for highway purposes, applies only to the "additional" tax authorized by the amendment, and does not apply to the first levy of a road and bridge tax of 15c which was authorized before the amendment. *Jefferson Iron Co. v. Hart*, 18 C. A. 525, 45 S. W. 321.

Taxes levied by the county commissioners' court for "public buildings and permanent improvements" for the purpose of transferring the funds,

as collected, to the fund for "general county purposes," thereby evading the limitation upon the amount of taxes for the latter purpose, are unauthorized and illegal. *Jefferson Iron Co. v. Hart*, 18 C. A. 525, 45 S. W. 321.

If city bonds have been issued to the full amount authorized under the constitutional limit as to taxation, a purchaser of bonds thereafter issued by the city is required to take notice of such fact. *Peck v. City of Hempstead*, 27 C. A. 80, 65 S. W. 633.

Prior to 1883, when this section was amended, cities of less than 10,000 inhabitants had no power to issue bonds for the purchase of water works, and holders of bonds so issued, as well as of funding bonds issued in their stead, were chargeable with notice of this fact. *City of Tyler v. Loan Ass'n*, 82 S. W. 1066; see, 98 Tex. 69.

Under this section the Legislature has the power to enact laws for the maintenance of public roads. The provision of this section with reference to the passage of local laws for the maintenance of public roads, is an exception to Art. 3, Sec. 56, and does not conflict therewith. *Young v. State*, 51 Cr. App. 366, 102 S. W. 117; *Smith v. Grayson County*, 18 C. A. 153, 44 S. W. 921; *Dallas County v. Plowman*, 99 Tex. 512, 91 S. W. 221; *Bluitt v. State*, 56 Cr. App. 527, 121 S. W. 168.

The Special Act of the Legislature, 1897, creating local road law for Ellis County, is constitutional. *Bluitt v. State*, 56 Cr. App. 525, 121 S. W. 168.

Under this amendment the Legislature is clothed with authority to pass local laws for the maintenance of public roads and highways, also give control to the county commissioners' court over citizens residing in incorporated cities and towns. And the fact that the defendant was summoned to work on any road situated within the limits of a city, would not be a defense for failure to pay county poll tax. *Bluitt v. State*, 56 Cr. App. 525, 121 S. W. 168.

There is no constitutional restriction interfering with the power of the Legislature to pass local county road laws and providing penalties for persons delinquent in paying poll tax or performing road service, and to make the punishment therefor cumulative. *Bluitt v. State*, 56 Cr. App. 525, 121 S. W. 168; *Young v. State*, 51 Cr. App. 366, 102 S. W. 117.

The Special Act by the Twenty-second Legislature providing for the creation and maintenance of a road system for Grayson and other counties, is constitutional. *Smith v. Grayson County*, 18 C. A. 153, 44 S. W. 921.

Also the Special Act of the Twenty-fourth Legislature creating local road law for Dallas County, is constitutional. *Dallas County v. Plowman*, 99 Tex. 512, 91 S. W. 221.

Where an action is made to recover taxes paid under protest, it cannot be shown that the tax, which was ordered to be levied for court house and jail purposes, was in fact levied with intent to divert it to general county purposes, thereby escaping the limitation of the general taxing power prescribed by this section and the status, as this would be a collateral attack on the record of the commissioners' court. The taxpayer's remedy would be a direct proceeding by injunction. *Creswell Ranch, etc., Co. v. Roberts County*, 27 S. W. 737.

The Act, 1889, authorizing a county to issue funding bonds for existing local indebtedness, was not invalid under this section providing that no county should levy a tax of more than 25c on the \$100 valuation for county purposes. *Cass County v. Wilbarger County*, 25 C. A. 52, 60 S. W. 990.

Decisions Under the Present Amendment, Adopted in 1906.

A statute imposing a two per cent gross receipt tax upon corporations producing oil, is not an ad valorem tax. *Texas Company v. Stephens*, 100 Tex. 639, 103 S. W. 482.

The levy by the commissioners' court of a tax for a county "improvement fund," which is in addition to the maximum tax of 25c permitted by this section for "general county purposes," if no improvement is in contemplation and with the intention of transferring such fund to the general revenue, is unlawful and invalid. *Ault v. Hill Co.*, 102 Tex. 337, 116 S. W. 359.

The constitutional limit of taxation does not embrace special assessments for municipal improvements. *Nalle v. City of Austin*, 103 S. W. 825; *City of Austin v. Nalle*, 120 S. W. 996; *Roundtree v. City of Galveston*, 42 Tex. 612; *Taylor v. Boyd*, 63 Tex. 533; *County of Harris v. Boyd*, 70 Tex. 241; *Higgins v. Bordagea*, 88 Tex. 460, 31 S. W. 52.

While the valuation of taxation for county purposes, under this section, must be by the county tax assessor, at the same time it was immaterial whether the valuation of property for the issuance of bonds by a newly created county for the erection of court house, etc., was made by the assessor of such county, or by the assessor of the county to which it had been attached for judicial purposes. *Rockwall County v. Roberts County*, 128 S. W. 369.

The 15c tax authorized by this section and R. S., Article 486, to be used by cities for "road and bridge" purposes, held not to be current maintenance tax only; but a city may issue bonds, payable in future years, for the construction of roads and bridges to the extent that said 15c on the \$100 will pay the current interest and provide a sinking fund sufficient to redeem them at maturity. *Bodenheim v. Lightfoot*, 132 S. W. 468.

The 15c tax on the \$100 for roads and bridges permitted by this section of the Constitution (amended in 1890) to be levied annually by cities and towns, is not restricted in its use to current expenses for that purpose, and a city may issue bonds for street improvements and provide for their payment, principal and interest, out of said 15c tax. *Bodenheim v. Lightfoot*, Attorney General, 103 Tex. 639, 132 S. W. 468.

The Act of the Thirty-first Legislature, 1909, p. 444, amending Art. 486, R. S. 1895, which authorizes cities to issue bonds, for the improvement of streets, based upon the tax therein authorized, is constitutional. *Bodenheim v. Lightfoot*, Attorney General, 103 Tex. 639, 132 S. W. 468.

The limitation of the indebtedness which a county is authorized to contract under this section of the Constitution, measured by referring to the assessed value of property therein, does not render illegal, in a newly organized county, the creation of all indebtedness until there shall be an assessment of its property by the officers of such new county after its organization. Its power to issue bonds for building a court house and jail may be based on and measured by the last existing assessment made by the assessor and approved by the commissioners' court of the organized county to which it was attached. *Rockwall County v. Roberts County*, 103 Tex. 406, 128 S. W. 369.

The Constitution authorizes the Legislature, Art. 8, Sec. 9, to pass local laws for the maintenance of public roads. Article 11, Sec. 2, requires the Legislature to provide for the laying out, construction and repairing of county roads by general laws. Held, that inasmuch as Section 2, Art. 11,

does not expressly prohibit what Sec. 9, Art. 8 authorizes, the latter section is merely cumulative of the former. *Ex parte Cooks*, 135 S. W. 139.

A special law providing for the creation and maintenance of a road system for Shelby County is constitutional. *Ex parte Cooks*, 135 S. W. 139.

Under this section of the Constitution (amendment of 1890), and R. S. 1895, Art. 1538, giving power to the commissioners' court to levy a tax of 25c on the \$100 to construct buildings, sewers, and other permanent buildings, being limited to that levy for all such purposes, a levy can be made for a court house and jail only so far as the limit has not already been reached for the other purposes. *Stratton v. Commissioners' Court of Kinney County*, 137 S. W. 1170.

This section of the Constitution limiting the rate of taxation for county purposes, limits the power of the Legislature, under Art. 11, Sec. 2, requiring court houses to be provided for by general law. *Stratton v. Commissioners' Court of Kinney County*, 137 S. W. 1170.

The power to levy a tax to construct court houses and jails or other public improvements, is given the commissioners' courts within the constitutional tax limit, without issuing bonds therefor. They may issue county warrants for such purposes. *Stratton v. Commissioners' Court of Kinney County*, 137 S. W. 1170; *Commissioners' Court of Floyd Co. v. Nichols*, 142 S. W. 37; *Cowan v. Dupree*, 139 S. W. 887.

An indebtedness incurred by a city for water works under this section, after the adoption of the amendment by vote of the people, but before the proclamation of the Governor putting such amendment into effect, was unauthorized. *Ellis v. City of Cleburne*, 35 S. W. 495.

10. Taxes not to Be Released Except When.—The Legislature shall have no power to release the inhabitants of, or property in, any county, city or town, from the payment of taxes levied for State or county purposes, unless in case of great public calamity in any such county, city or town, when such release may be made by a vote of two-thirds of each House of the Legislature. [Const. Art. 8, Sec. 10.]

NOTE.—By vote of "two-thirds of each house" has been construed to mean two-thirds of members present and voting—not of all elected.—Editor.

Under this Section and Section 55 of Article 3, the Legislature is without authority to enact provision in a city charter empowering defendants to plead limitation in pending suits by the city for taxes due for more than four years before the suits begun. *Ollivier v. City of Houston*, 22 C. A. 55, 54 S. W. 940; (affirmed, 93 Tex. 207; *City of Houston v. Stewart*, 40 C. A. 499, 90 S. W. 50; *Link v. City of Houston*, 59 S. W. 566; *Link v. City of Houston*, 94 Tex. 378, 60 S. W. 664.

NOTE.—Chapters 32, 61, 92, and 116, Acts of 35th Legislature remit State taxes to certain localities, by virtue of this section.

11. To Be Assessed in County Except When.—All property, whether owned by persons or corporations, shall be assessed for

taxation, and the taxes paid in the county where situated, but the Legislature may, by a two-thirds vote, authorize the payment of taxes of non-residents of counties to be made at the office of the Comptroller of Public Accounts. And all lands and other property not rendered for taxation by the owner thereof shall be assessed at its fair value by the proper officer. [Const. Art. 8, Sec. 11.]

The securities of an insurance company on deposit with State Treasurer have their situs and are taxable in Travis County. *Guaranty Life Ins. Co. v. City of Austin*, 190 S. W. 189.

The Act of 1905 requiring the valuation of the "intangible assets" of railway companies by a State Tax Board is not in contravention of this section requiring railroad property to be assessed in the county where it is situated. *M. K. & T. Ry. v. Shannon*, 100 Tex. 389, 100 S. W. 138; *Lively v. M. K. & T. Ry.*, 102 Tex. 557, 120 S. W. 852; *M. K. & T. Ry. v. Hassell*, 123 S. W. 191.

The personal property, including promissory notes, owned by non-resident, does not necessarily become taxable in Texas by reason of being temporarily within its limits; but may, under certain circumstances, acquire such situs in this State as to become taxable here though owned by a resident of another State. *Hall v. Miller*, 102 Tex. 294, 115 S. W. 1168; *Hardesty v. Fleming*, 57 Tex. 401; *Waggoner v. Whaley*, 21 C. A. 3; *State v. Fidelity, etc., Co.*, 35 C. A. 214, 80 S. W. 544; *Piano Co. v. City of Dallas*, 61 S. W. 942, 2 Tex. Ct. Rep. 262.

If a non-resident owns personal property situated in this State, as distinguished from property merely passing through, or temporarily within the State for the purposes of trade, and other like purposes, such property is subject to taxation in the county where situated. *Hardesty v. Fleming*, 57 Tex. 401.

Cattle located in a county in this State for five months, owned by a non-resident, including the first day of January, were subject to taxation in such county. *Hardesty v. Fleming*, 57 Tex. 401.

Where the words "owned in this State" are used does not necessarily mean that the owner must reside in this State in order for personal property situated within its limits to become taxable here. *Hardesty v. Fleming*, 57 Tex. 401; *Hall v. Miller*, 102 Tex. 294, 115 S. W. 1168.

Construing this section and Section 12, a non-resident of an unorganized county, who owns personal property, in the absence of the Legislature, by two-thirds vote, authorizing payment of taxes elsewhere, becomes taxable in the county to which such unorganized county is attached for judicial purposes. *Llano Cattle Co. v. Faught*, 69 Tex. 406, 5 S. W. 494.

If cattle are moved in this State from one county to another, because of drouth and for pasturage, and in the latter county remain for several months, including the first day of January, they become taxable in the county to which they were removed. *Clampitt v. Johnson*, 17 C. A. 284, 42 S. W. 866.

Bank stock shares are subject to taxation in the county where they are located. *Rosenberg v. Weeks*, 67 Tex. 586.

If cattle are shipped into this State for the purpose of feeding, under a bill of lading permitting them to be fed for a definite time and then shipped

to another State, such cattle are subject to taxation, if in this State on the first day of January, and are not exempt therefrom by the Commerce Clause of the Federal Constitution. *Waggoner v. Whaley*, 21 C. A. 3.

Municipal bonds and other securities deposited with the State Treasurer by a non-resident, are liable to rendition and taxation for State and county purposes in Travis County. *State v. Fidelity, etc., Co.*, 35 C. A. 227, 80 S. W. 544.

As provided in this section and Section 12 of this article, the acceptance by the Comptroller of the rendition of land for taxation by a non-resident of an unorganized county, does not prevent the county, upon its subsequent organization, from collecting the taxes, where the same have not been actually paid to the Comptroller, and the organization is effected prior to June 1st of that year. *Magnolia Cattle, etc., Co., v. Love*, 21 S. W. 574, 2 C. A. 385.

The "proper officer" authorized by this section to make assessments of property, was, by the city charter of the city of San Antonio, the city assessor, and not the board of revision, and said board of revision was without authority to add to the assessor's list the franchise of a street railway. *St. Ry. v. City of San Antonio*, 54 S. W. 907, 22 C. A. 341.

When a resident cattle owner has a pasture, part of which is in several adjoining counties, only such number of the cattle in the pasture in proportion to the land located in the assessing county can be assessed therein, and sale for the taxes of such balance of the cattle will be restrained. *Cammack v. Matador Land & Cattle Co.*, 30 C. A. 421, 70 S. W. 454.

The City of Galveston had no jurisdiction to assess for taxation vessels which have acquired an actual situs at another place, even though enrolled and registered in the United States Custom House in the City of Galveston. *City of Galveston v. Guffey Petroleum Co.*, 113 S. W. 585; *State v. Higgins Oil, etc., Co.*, 116 S. W. 617.

In certain instances the Legislature may give to property an artificial situs for the purpose of taxation; but when the property is physical in character, or of a nature that can acquire an actual situs, it must, under our Constitution, be taxed in the county where actually situated. *City of Galveston v. Guffey Petroleum Co.*, 113 S. W. 585.

Art. 5072, R. S. 1895, providing that all persons, companies, corporations, etc., owning steamboats, sailing vessels, etc., shall be required to list the same for assessment and taxation in the county in which the same are enrolled, registered, etc., or kept when not enrolled, registered or licensed, is violative of this section, as applied to vessels which have no situs at such place of enrollment. *City of Galveston v. Guffey Petroleum Co.*, 113 S. W. 585.

Minerals contained in land are property, and if severed from the land by a proper conveyance may be taxed separately from the land itself. *State v. Dowman*, 134 S. W. 793.

12. Property in Unorganized Counties.—All property subject to Taxation in, and owned by residents of, unorganized counties, shall be assessed and the taxes thereon paid in the counties to which such unorganized counties shall be attached for judicial purposes; and lands lying in and owned by non-residents of unorganized counties, and lands lying in the territory not laid off into counties,

shall be assessed, and the taxes thereon collected, at the office of the Comptroller of the State. [Const. Art. 8, Sec. 12.]

Personal property, owned by a non-resident of an unorganized county in the absence of legislative enactment, by two-thirds vote, which authorizes the payment of taxes elsewhere, becomes taxable in the county to which such unorganized county is attached for judicial purposes. *Llano Cattle Co. v. Faught*, 69 Tex. 406, 5 S. W. 494.

This section positively requires that lands situated in unorganized counties, and owned by non-residents, shall be assessed and the taxes thereon paid at the office of the Comptroller. *Llano Cattle Co. v. Faught*, 69 Tex. 406, 5 S. W. 494.

The acceptance by the Comptroller of the rendition of land for taxation by a non-resident of an unorganized county, does not prevent said county from collecting the taxes, upon its subsequent organization, where the same have not been actually paid to the Comptroller, and the organization is affected prior to June 1st of that year. *Magnolia Cattle & Land Co. v. Love*, 21 S. W. 574, 2 C. A. 385.

13. Redemption From Tax Sales by Owners.—Provision shall be made by the first Legislature for the speedy sale of a sufficient portion of all lands and other property for the taxes due thereon, and every year thereafter for the sale of all lands and other property, upon which the taxes have not been paid; and the deed of conveyance to the purchaser for all lands and other property thus sold shall be held to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud; provided, that the former owner shall, within two years from date of purchaser's deed, have the right to redeem the land upon the payment of double the amount of money paid for the land. [Const. Art. 8, Sec. 13.]

Landed property shall not be sold for the taxes due thereon, except under a decree of some court of competent jurisdiction. (Const. 1869, Art. XII, Sec. 21.)

"Provision shall be made by the first Legislature for the condemnation and sale of all lands for taxes due thereon; and, for five years thereafter, of all lands, the taxes upon which have not been paid to that date." (Const. 1869, Art. XII, Sec. 22.)

Under this section a tax sale of property if illegally assessed would constitute a cloud on the title; and taxes paid under protest can be recovered. *Galveston Gas Co. v. County of Galveston*, 54 Tex. 287, 72 Tex. 509.

The stringent provisions in the Constitution of this State, and laws thereunder, in reference to the effect to be given to tax titles, authorize a more liberal construction to be placed upon the act of a party paying an illegal tax to prevent the sale of his property, and the consequent cloud which such a sale would constitute upon title to real estate, than could be given to such act of a party under laws less stringent. *Galveston City Co. v. Galveston*, 56 Tex. 491.

This section of the Constitution states only the effect of a deed when the law has been complied with. It does not dispense with the proof of a valid assessment, sale, etc. *Meredith v. Coker*, 65 Tex. 31; *Lufkin v. City of Galveston*, 73 Tex. 340, 11 S. W. 340; *Eustis v. City of Henrietta*, 90 Tex. 473, 39 S. W. 569; *Davie v. City of Galveston*, 16 C. A. 17, 41 S. W. 145; *Earle v. City of Henrietta*, 91 Tex. 304, 43 S. W. 15. To similar effect, see, among others, the following cases: *Calder v. Ramsey*, 66 Tex. 218, 18 S. W. 502; *Henderson v. White*, 69 Tex. 103, 5 S. W. 374; *Ry. v. Poindexter*, 70 Tex. 98, 7 S. W. 316; *Dawson v. Ward*, 71 Tex. 75, 9 S. W. 106.

Art. 518, R. S., 1895, requires that no person shall be permitted to question the title acquired by a city tax deed without showing that all taxes due upon the lands have been paid, is, as applied to a void sale for taxes, contrary to the provisions of this section, Sections 3 and 19 of Article 1, and of the Fourteenth Amendment to the Constitution of the United States. *Eustis v. City of Henrietta*, 90 Tex. 473, 39 S. W. 569; *Earle v. City of Henrietta*, 91 Tex. 304, 43 S. W. 15; *Lufkin v. City of Galveston*, 73 Tex. 342, 11 S. W. 340.

The right of redemption which is secured to the owner by this section applies only to "the speedy sale" for which the Legislature was required to make provision. The proviso makes the period begin from the date of the purchaser's deed, in which the right of redemption is given. *City of San Antonio v. Berry*, 92 Tex. 327, 48 S. W. 496; *Collins v. Ferguson*, 22 C. A. 555, 56 S. W. 225.

Arts. 5232f and 5232j, R. S., 1895, authorizing foreclosure on several tracts of land to pay a lump sum due for delinquent taxes on all of them, and giving the taxpayer the right in Art. 5232g to require the sheriff to sell each tract separately, do not infringe this section. *Masterson v. State*, 17 C. A. 94, 42 S. W. 1003; *Guergin v. City of San Antonio*, 19 C. A. 98, 50 S. W. 140; *Ryon v. Davis*, 75 S. W. 59.

A collector's deed to property subject to taxation, and sold in accordance with law, vests a good and perfect title, which can be impeached only for actual fraud. Such a deed would therefore constitute a cloud upon the title to land regularly sold, but not liable for the tax, to prevent or remedy which equity may be invoked. *Cassiano v. Ursuline Academy*, 64 Tex. 676.

An action foreclosing a tax lien, where the judgment directs that the plaintiff be put into possession within thirty days, in nowise interferes with the defendant's right of redemption within two years. *Guergin v. City of San Antonio*, 19 C. A. 101, 50 S. W. 140; *City of San Antonio v. Berry*, 92 Tex. 319, 48 S. W. 496.

NOTE.—Held, in the *City of Marlin v. Green*, 34 C. A. 423, 78 S. W. 704, 79 S. W. 40, to the contrary, under the Act of the Twenty-sixth Legislature, 1889, expressly providing that purchaser at foreclosure sale shall not be entitled to possession until expiration of two years from date of deed. See, also, *Masterson v. State*, 17 C. A. 94, 42 S. W. 1003.

Since a deed from the tax collector of the city to a purchaser at a tax sale of land is no evidence of title without proof of all the jurisdictional prerequisites, the payment of tax to avoid such sale, even though made under protest, and with notice that the payer will sue to recover it, is not a compulsory payment, and the taxes so paid cannot be recovered. *Davie v. City of Galveston*, 16 C. A. 17, 41 S. W. 145; *Galveston City Co. v. Galveston*, 56 Tex. 492.

This section providing for allowing the owner of land sold for taxes the privilege of redemption within two years, applies to summary sales for taxes, but not to sales under a decree of court foreclosing a lien for the taxes, unless the right of redemption is specifically given in the law by virtue of which such suit is brought. *Collins v. Ferguson*, 22 C. A. 555, 56 S. W. 225; *San Antonio v. Berry*, 92 Tex. 327, 48 S. W. 496.

The redemption privilege within two years secured by this section is not applicable to a sale under a municipal charter containing no redemption clause. *Collins v. Ferguson*, 22 C. A. 555, 56 S. W. 225.

By omitting the provision contained in the Constitution of 1869, it was not the intention of the framers of the Constitution of 1876, that sales of lands for taxes could only be made by decree of court, to prohibit the Legislature from providing for the sale of such lands in that manner. The Constitution certainly does not, either in terms or by implication, prohibit legislation providing for the foreclosure of land for taxes in the courts, and a sale thereof by judicial decree. *League v. State*, 93 Tex. 553, 56 S. W. 262; *City of Henrietta v. Eustis*, 87 Tex. 14, 26 S. W. 619.

The Constitution limits the power of the Legislature to declare the conclusive effect of a tax deed. The inquiry into the facts essential to give the officer power, by the courts, to make the sale for taxes cannot be precluded by legislative act. *Lufkin v. City of Galveston*, 73 Tex. 342, 11 S. W. 340; *Eustis v. City of Henrietta*, 91 Tex. 332, 43 S. W. 259.

This section where the provision declares that a tax deed shall be held to vest good and perfect title in the purchaser does not in fact vest in the purchaser ownership of the land sold for taxes as against those not claiming under the unknown owner, but adversely to him, under limitation title, when he has no legal notice of the pendency of such suit. *Patton v. Minor*, 117 S. W. 922; see, same case, 125 S. W. 6.

14. Providing for Election of Assessors.—There shall be elected by the qualified electors of each county, at the same time and under the same law regulating the election of State and county officers, an assessor of taxes, who shall hold his office for two years and until his successor is elected and qualified. [Const. Art. 8, Sec. 14.]

“Justices of the peace shall assess the property in their respective precincts, under such laws as shall be provided and enacted by the Legislature; and the sheriffs of the several counties of this State shall collect the taxes so assessed.” Const. 1869, Art. XII, Sec. 28.

“No person shall be eligible to any office, State, county or municipal, who is not a registered voter in the State.” (Const. 1869, Art. III, Sec. 14.)

There is nothing in this section or in the statutes of this State, which requires that a tax assessor shall be qualified elector. *Steusoff v. State*, 80 Tex. 428, 15 S. W. 1100; *Harkreader v. State*, 35 Cr. App. 254, 33 S. W. 117.

A person moving from one county to another county within this State within less than six months preceding an election at which he is elected to office, does not render him ineligible to hold the office. *Steusoff v. State*, 80 Tex. 428, 15 S. W. 1100.

The Act of 1905 authorizing the assessment by a State Tax Board of the “intangible assets” of railway companies, to be distributed among the

several counties through which the railways run, is not in contravention of this section. *M. K. & T. Ry. v. Shannon*, 100 Tex. 389, 100 S. W. 141; *Lively v. M. K. & T. Ry.*, 102 Tex. 557, 120 S. W. 855; *M. K. & T. Ry. v. Hassell*, 123 S. W. 191.

While it seems intended by the Constitution that all ordinary assessments of property for taxation should be made by the county assessor, it was not intended to deprive the Legislature of the power to devolve the duty on other officers in special cases where the county assessors are clearly unable to value, as a whole, the intangible assets, or intelligently apportion the valuation among the various counties. The Legislature was authorized to provide a mode of ascertaining such value by the requirement of Section 1 of this article, that taxation should be equal and uniform. *M. K. & T. Ry. v. Shannon*, 100 Tex. 391, 100 S. W. 141.

15. Creating Lien for Taxes on Property.—The annual assessment made upon landed property shall be a special lien thereon, and all property, both real and personal, belonging to any delinquent taxpayer shall be liable to seizure and sale for the payment of all the taxes and penalties due by such delinquent; and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the Legislature may provide. [Const. Art. 8, Sec. 15.]

NOTE.—The following article was proposed but substituted by the above provision by the Constitutional Convention of 1875: "All real property rendered by any individual, or assessed against him by any county assessor, or the Comptroller of the State, shall be held liable for *all his taxes*, whether upon real or personal property, and no conveyance of real estate, after rendition for tax, and prior to the usual period for collection, shall relieve the purchaser from this lien in behalf of the State." Proceedings of Constitutional Convention of 1875, page 382.

Where a city is chartered under the general laws of the State it may maintain a suit for personal judgment against the taxpayer, and for a foreclosure of the lien upon the particular property upon which the tax is assessed. *City of Henrietta v. Eustis*, 87 Tex. 18, 26 S. W. 619; *Turner v. City of Houston*, 21 C. A. 216, 51 S. W. 642. See, *Trust Co. v. City of Oak Cliff*, 8 C. A. 219, 27 S. W. 1036; *Grace v. City of Bonham*, 26 C. A. 163, 63 S. W. 158; *Bennison v. City of Galveston*, 34 C. A. 382, 78 S. W. 1089; *McCrary v. City of Comanche*, 34 S. W. 680; *Cave v. City of Houston*, 65 Tex. 619; *Lufking v. City of Galveston*, 73 Tex. 343, 11 S. W. 340.

The taxes due a municipal corporation may be collected out of any property which the taxpayer may own at the time of the assessment or subsequently acquired; the tax may be collected by sale of the particular property on which it is assessed by enforcing the lien, or by the sale of that or other property under a judgment of the court, or by seizure and sale of personal property by the assessor and collector. *City of Henrietta v. Eustis*, 87 Tex. 18, 26 S. W. 619.

The remedy "by seizure and sale," does not exclude the right to proceed for taxes by suit at law. The language of the Constitution, of this section, "and such property may be sold for the taxes and penalties due by

such delinquent, under such regulations as the Legislature may provide," relates to such summary method as the Legislature might deem advisable. *City of Henrietta v. Eustis*, 87 Tex. 18, 26 S. W. 619.

This section and Section 13 of this article authorizing the Legislature to provide for speedy sale of lands for taxes, do not prohibit the Legislature from providing for the sale of such lands by judicial decree, by omitting the provision of 1869, in the Constitution, that such sales could be made only by decree. *League v. State*, 56 S. W. 262, 93 Tex. 553.

This section and the laws enacted in pursuance thereof, make all property, both real and personal, subject to seizure and sale for the payment of all taxes and penalties due by the delinquent taxpayer; and the tax collector can seize and sell personal property of the delinquent for the taxes due upon real property as well as personal, before resorting to a sale of the realty. *Wynne v. Simmons Hdw. Co.*, 67 Tex. 46, 1 S. W. 571.

Arts. 5232f and 5232j, R. S. 1895, authorizing judgment in tax foreclosure suit, decreeing a sale of different tracts of land in gross for a lump sum, is valid, under this section. *Masterson v. State*, 42 S. W. 1004, 17 C. A. 94; *Turner v. City of Houston*, 21 C. A. 216, 51 S. W. 642; *Guergin v. City of San Antonio*, 19 C. A. 98, 50 S. W. 140; *League v. State*, 56 S. W. 262, 93 Tex. 553; *Ryon v. Davis*, 32 C. A. 500, 75 S. W. 59.

The lien which this section of the Constitution fixes upon realty to secure the taxes and penalties, attaches from January 1st. All property owned by a person on January 1st must be listed for taxation by June 1st following, and even though the taxes for that year do not come due until October 1st, such owner is personally liable therefor even though he sells the property prior to October 1st and before the amount of the taxes has been ascertained. *Carswell v. Habberzettle*, 39 C. A. 495, 87 S. W. 911.

The lien of the State arises out of the annual assessment of the property, under this article, and does not exist until that assessment is made. The word "assessment" as here used evidently means the sum which has been ascertained as the apportioned part of the tax to be charged against the particular piece of property, but under our Constitution and the provisions of our statutes, the word embraces more than simply the amount, and includes the procedure on the part of the officers by which the property is listed, valued, and finally the pro rata declared. *State v. Farmer*, 94 Tex. 234, 59 S. W. 541.

Sayles' Civ. St. 1897, Articles 5086 and 3351, and under this section of the Constitution, where defendants in adverse possession had not been in possession for the ten years required to confer title by limitation when the State instituted suit to foreclose its lien for unpaid taxes, so that they were not proper parties to such action, they were still bound by the judgment, though not served with notice, and hence were not entitled to hold the land as against the purchaser from the State and those claiming under him. *Patton v. Minor*, 103 Tex. 179, 125 S. W. 6.

This section of the Constitution which makes provision for the annual assessment for taxes upon landed property a special lien thereon, and subjecting it to sale for the payment of taxes, is not limited by the provision of Article 16, Sec. 50, protecting the homestead against forced sale; and the homestead is liable, not only for the taxes which are assessed upon it, but also for the penalties which the law prescribes in case of failure to make payment of such taxes. *City of San Antonio v. Toepperwein*, 133 S. W. 416.

Two constitutional provisions relating to the same subject must be construed so as to give effect to both, if possible, and if they are in conflict, the special provision will prevail. *City of San Antonio v. Toepperwein*, 133 S. W. 416.

A conveyance of mineral rights held to be a severance in ownership of the minerals from the surface of the ground, authorizing taxation of the grantee's interest as an interest in land. *State v. Downman*, 134 S. W. 787.

16. Sheriff to Be Collector in Certain Instances.—The sheriff of each county, in addition to his other duties, shall be the collector of taxes therefor. But in counties having ten thousand inhabitants, to be determined by the last preceding census of the United States, a collector of taxes shall be elected, to hold office for two years and until his successor shall be elected and qualified. [Const. Art. 8, Sec. 16.]

In determining whether a sheriff was, under this section, also ex officio collector of taxes by reason of his county containing less than 10,000 inhabitants, under the "last preceding census of the United States," the list of the enumerator taking the last census for the county, if duly certified as such, and filed in the office of the county clerk, prior to his election, will govern. *Nelson v. Edwards*, 55 Tex. 391.

The framers of the Constitution, in determining whether a county should have an independent tax collector, and fixing its status according to population as shown by last census, failed to make like provision for determining when a county should be entitled to have two clerks; held, that the same method should be pursued as that provided for determining whether there shall be a collector of taxes. *Brooke v. Dulaney*, 100 Tex. 86, 93 S. W. 999.

17. Legislature May Tax Other Objects.—The specification of the objects and subjects of taxation shall not deprive the Legislature of the power to require other subjects or objects to be taxed, in such manner as may be consistent with the principles of taxation fixed in this Constitution. [Const. Art. 8, Sec. 17.]

The Legislature has authority under this section to provide a method for assessing the "intangible assets" of railway companies by a "State Tax Board." Such intangible assets constitute one of the "other subjects" of taxation covered by this section. *M. K. & T. Ry. v. Shannon*, 100 Tex. 389, 100 S. W. 141.

18. Duty of Legislature to Equalize Taxes.—The Legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation (the county commissioners' court to constitute a board of equalization); and may also provide for the classification of all lands with reference to their value in the several counties. [Const. Art. 8, Sec. 18.]

NOTE.—See chapter dealing with "exemptions" herein.

If the board of equalization errs in determining the proper valuation of property listed for taxes, and fixes a valuation deemed by the taxpayer excessive, that fact gives him no right to resort to the courts for relief. *I. & G. N. R. R. v. Smith County*, 54 Tex. 15.

The provision of this section declaring that the county commissioners' court shall constitute a board of equalization, does not apply to city taxes, but to State and county, provision for which is made in Article 11, Section 5 of the Constitution. *Scollard v. City of Dallas*, 42 S. W. 641, 16 C. A. 620.

There is no prohibition in this section or Section 18 of Article 5 against the commissioners' court, while sitting as a board of equalization, to order a local option election; and R. S. 1895, Art. 3384, authorizes such courts to order local option elections whenever they deem it expedient. *Abbott v. State*, 42 Cr. App. 8, 57 S. W. 98; *Raby v. State*, 42 Cr. App. 57, 57 S. W. 651.

County boards of equalization have no authority to take away or add property to the list returned by the assessor, but can only act on matters of valuation. *Gas Co. v. County of Galveston*, 54 Tex. 287, 72 Tex. 504; *Davis v. Burnett*, 77 Tex. 3, 13 S. W. 613; *St. Ry. v. City of San Antonio*, 22 C. A. 343, 54 S. W. 907; *Sullivan v. Bitter*, 113 S. W. 193.

Act of 1907, amending Act of 1905, provides for the assessment of the intangible assets of railway companies, and does not violate this section. *Lively v. M. K. & T. Ry.*, 102 Tex. 545, 120 S. W. 852, 121 S. W. 1150.

In this section the equalization referred to is of the character of property which is required to be assessed in the county under Section 11 of this article. *Lively v. M. K. & T. Ry.*, 102 Tex. 545, 120 S. W. 852, 121 S. W. 1150.

The Legislature having the authority to create the State Tax Board to assess the intangible assets of railway companies for the whole State and to distribute it among the counties, had likewise authority to prohibit an interference with that assessment by the county board of equalization and to require the observance and enforcement of it by the local county officers. *Lively v. M. K. & T. Ry.*, 102 Tex. 545, 120 S. W. 852, 121 S. W. 1150.

This section relates to State and county taxes only; the provision of special city charter for board of appeals, with power to equalize values, is authorized under Art. 11, Sec. 5. *Scollard v. City of Dallas*, 16 C. A. 624, 42 S. W. 640.

19. Limitations Upon Power of Legislature to Levy Taxes.—The Legislature shall not have the right to levy taxes or impose burdens upon the people, except to raise revenue sufficient for the economical administration of the government, in which may be included the following purposes:

The payment of all interest upon the bonded debt of the State;

The erection and repairs of public buildings;

The benefit of the sinking fund, which shall not be more than two per centum of the public debt; and for the payment of the present floating debt of the State, including matured bonds for the payment of which the sinking fund is inadequate;

The support of public schools, in which shall be included colleges

and universities established by the State; and the maintenance and support of the Agricultural and Mechanical College of Texas;

The payment of the cost of assessing and collecting the revenue; and the payment of all officers, agents and employes of the State government, and all incidental expenses connected therewith;

The support of the Blind Asylum, the Deaf and Dumb Asylum and the Insane Asylum, the State Cemetery and the public grounds of the State;

The enforcement of quarantine regulations on the coast of Texas; The protection of the frontier. [Const. Art. 3, Sec. 48.]

This section of the Constitution does not prohibit the Legislature from conferring upon cities the power to impose special taxes upon persons and property for street improvements. *Storrie v. Woessner*, 47 S. W. 837. Affirmed: 51 S. W. 1132; *Roundtree v. City of Galveston*, 42 Tex. 613; *Hutcherson v. Storrie*, 48 S. W. 788; *Adams v. Fisher*, 63 Tex. 651; *Taylor v. Boyd*, 63 Tex. 533; *Transportation Co. v. Boyd*, 67 Tex. 153, 2 S. W. 364; *Connor v. City of Paris*, 87 Tex. 32, 27 S. W. 88; *Adams v. Fisher*, 75 Tex. 657, 6 S. W. 772; *Storrie v. Cortes*, 90 Tex. 283, 38 S. W. 154; *Ry. Co. v. Storrie*, 44 S. W. 693; *Higgins v. Bordages*, 88 Tex. 461, 31 S. W. 53; *Wood v. City of Galveston*, 76 Tex. 127, 13 S. W. 227; *Kettle v. City of Dallas*, 35 C. A. 632, 80 S. W. 874; *Allen v. Galveston*, 51 Tex. 320; *Harrell v. Storrie*, 47 S. W. 839.

This section is a limitation upon the Legislature in levying taxes for State purposes, and was not intended to restrict municipal governments in the assessment of special taxes for street improvements. *Storrie v. Woessner*, 47 S. W. 837. (Affirmed: 51 S. W. 1132.)

But a city or town has no inherent right to levy special assessments for street improvements. Such power must be granted by the Legislature. *Connor v. City of Paris*, 87 Tex. 32, 27 S. W. 88; *Allen v. Galveston*, 51 Tex. 302.

The limitation in this section upon the purposes for which taxes or burdens may be imposed, applies to the Legislature in the administration of the State government, and does not prohibit it from conferring upon municipal corporation the power to make local improvements by means of local assessments upon the property holders benefited. *Storrie v. St. Ry. Co.*, 92 Tex. 137, 46 S. W. 796.

The language "the Legislature shall not have the right to levy taxes or impose burdens upon the people," etc., denies to the legislative department the right to exercise this power itself, and does not refer to any action by the Legislature which would confer such authority upon a municipal corporation. It limits the exercise of that power by the Legislature to raise revenue for the administration of the State government as distinguished from the administration of municipal governments. *Storrie v. St. Ry.*, 92 Tex. 137, 46 S. W. 796.

Fee bill, requiring fees of county clerk, etc., in excess of a stated amount, to be paid over to the county treasurer, is not violative of this section prohibiting the levy of taxes or imposition of burdens except to raise sufficient revenue "for the economical administration of the government." *Tarrant County v. Butler*, 35 C. A. 423, 80 S. W. 654.

Act of April 2, 1887, providing a bounty for the destruction of certain wild animals does not violate this section. One of the purposes for which government is instituted is to protect citizens in the use and enjoyment of their property, and whatever is done in pursuance of this purpose is in "administration of the government." *Dimmitt County v. Frazier*, 27 S. W. 829.

Act of February 12, 1907, imposing occupation tax on persons handling liquor C. O. D., is a revenue law, and not violative of this section. *Crad-dock v. Express Co.*, 125 S. W. 59.

20. Power of Legislature to Levy State Advalorem Tax for Benefit Indigent Confederate Soldiers.—The Legislature shall have no power to make any grant or authorize the making of any grant of public money to any individual, association of individuals, municipal or other corporation whatsoever; provided, however, the Legislature may grant aid to indigent and disabled Confederate soldiers and sailors who came to Texas prior to January 1, 1900, and their widows in indigent circumstances, and who have been bona fide residents of the State of Texas since January 1, 1900, and who were married to such soldiers and sailors anterior to January 1, 1900; to indigent and disabled soldiers, who under special laws of the State of Texas, during the war between the States served for a period of at least six months in organization for the protection of the frontier against Indian raids or Mexican marauders, and to indigent and disabled soldiers of the militia of the State of Texas, who were in active service for a period of at least six months during the war between the States, to the widows of such soldiers who are in indigent circumstances, and who were married to such soldiers prior to January 1, 1900, provided that the word "widow" in the preceding lines of this section shall not apply to women born since 1861, and also to grant aid for the establishment and maintenance of a home for said soldiers and sailors, their wives and widows, and women who aided in the Confederacy under such regulations and limitations as may be provided for by law; provided the Legislature may provide for husband and wife to remain together in the home.

The Legislature shall have the power to levy and collect, in addition to all other taxes heretofore permitted by the Constitution of Texas, a State ad valorem tax on property not exceeding five cents on the one hundred dollars valuation for the purpose of creating a special fund for the payment of pensions for services in the Confederate Army and Navy, frontier organizations and the militia of the State of Texas, and for the widows of such soldiers serving in said armies and navies, organizations, or militia. [Const. Art. 3, Sec. 51, adopted November 5, 1912.]

Act providing for the payment out of the county treasury of bounties for the destruction of wolves and other wild animals, does not contravene this section prohibiting the granting of public money to individuals. *Weaver v. Scurry County*, 28 S. W. 836.

Article 4934, R. S. 1895, providing for payment by counties of the value of diseased animals which have been condemned and killed, does not violate this section prohibiting the Legislature to make any grant or authorize the making of any grant of public moneys to individuals. *Chambers v. Gilbert*, 17 C. A. 106, 42 S. W. 630; *Livingston v. Ellis County*, 30 C. A. 20, 68 S. W. 724; *Maynard v. Freeman*, 60 S. W. 334.

Fee bill, providing that fees of county officers in excess of a stated amount, shall be paid over to the county treasurer, does not violate the provision of this section prohibiting the grant of public money to a municipal corporation. *Tarrant County v. Butler*, 35 C. A. 421, 80 S. W. 656.

By "public money," the framers of the Constitution most probably meant moneys received by officers of the State and belonging to the State, derived in the ordinary processes of taxation, and in other ways permissible under the Constitution. *Tarrant County v. Butler*, 35 C. A. 421, 80 S. W. 656.

City charter providing for the payment into the city treasury of fines and costs collected by the city recorder, does not violate this section. *Johnson v. Hanscom*, 37 S. W. 453, 90 Tex. 321.

21. Legislature not to Grant Certain Powers to Cities and Counties.—The Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State, to lend its credit, or to grant public money or thing of value in aid of, or to, any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company; provided, however, that under legislative provision any county, any political subdivision of a county, any number of adjoining counties, or any political subdivision of the State, or any defined district now or hereafter to be described and defined within the State of Texas, and which may or may not include towns, villages or municipal corporations, upon a vote of a two-thirds majority of the resident property taxpayers voting thereon who are qualified electors of such district or territory to be affected thereby, in addition to all other debts, may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such district or territory, except that the total bonded indebtedness of any city or town shall never exceed the limits imposed by other provisions of this Constitution, and levy and collect such taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, as the Legislature may authorize, and in such manner as it may authorize the same, for the following purposes, to-wit:

- (a) The improvement of rivers, creeks and streams to prevent

overflows, and to permit of navigation thereof, or irrigation thereof, or in aid of such purposes.

(b) The construction and maintenance of pools, lakes, reservoirs, dams, canals and waterways for the purposes of irrigation, drainage or navigation, or in aid thereof.

(c) The construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof. [Sec. 52, Art. 3, adopted election November 8, 1904; proclamation December 29, 1904.]

Act providing for payment out of the county treasury of bounties for the destruction of wolves and other wild animals, is not violative of this section, prohibiting the grant of public money to individuals, etc. *Weaver v. Scurry County*, 28 S. W. 836; *Dimmitt County v. Frazier*, 27 S. W. 829.

Act providing for the payment by counties of the value of diseased animals which have been condemned and killed, is not unconstitutional as authorizing the making of a grant of public money to individuals. *Chambers v. Gilbert*, 17 C. A. 106, 42 S. W. 630.

City charter providing for the payment into the city treasury of fines and costs collected by the city recorder, does not violate this section. *Johnson v. Hanscom*, 37 S. W. 453, 90 Tex. 321.

This section and Section 53 illustrate the care with which the framers of the Constitution guarded the people against what experience had shown to be hurtful policies on the part of municipal governments. * * * It was not intended by the use of the general language employed in Section 48 to prohibit the Legislature from conferring upon municipal corporations the power to improve streets at the expense of the property owners. *Storrie v. Houston St. Ry.*, 92 Tex. 139, 46 S. W. 796.

Provision of city charter denying the city to sell water service beyond its limits, with an exception in favor of manufacturing plants, is not a grant of a thing of value to such plant, prohibited by this section. *Sturgeon v. City of Paris*, 122 S. W. 967.

One of the districts formed under authority of this section may embrace a part, or the whole, of another district formed for another purpose; so that a road district, formed after the organization of a drainage district, may embrace a part or all of the drainage district, and constitutes an entity independent of the drainage district, with power to issue bonds. *Simmons v. Lightfoot*, 146 S. W. 871.

This provision of the Constitution authorizes a bonded indebtedness of one-fourth of the assessed value of the realty of any districts which may be created for all of the purposes named in the provision, and not for each of such purposes. *Simmons v. Lightfoot*, 146 S. W. 871.

Under this section of the Constitution a road district and a drainage, covering same territory, are not authorized each to create a debt for their respective purposes, equal to one-fourth of the assessed value of the real property of such district, but the first district formed for either purpose may create a debt in any amount not exceeding such one-fourth. *Simmons v. Lightfoot*, 146 S. W. 871.

22. Cities and Towns to Be Chartered by General Law, Etc.—
Cities and towns, having a population of five thousand or less, may

be chartered alone by general law. They may levy, assess and collect an annual tax to defray the current expenses of their local government; but such tax shall never exceed, for any one year, one-fourth of one per cent., and shall be collectible only in current money; and all licenses and occupation taxes levied, and all fines, forfeitures, penalties and other dues accruing to cities and towns, shall be collectible only in current money. [Sec. 4, Art. 11, adopted election August 3, 1909; proclamation September 24, 1909.]

This section (original section) and Section 9 of Article 8, are limitations upon the power of a city, as an independent school district, to levy a tax for school purposes in addition to the taxing power granted for general city purposes. *City of Fort Worth v. Davis*, 57 Tex. 231.

The tax mentioned in this section to defray the current expenses of the local government of cities and towns refers to an ad valorem tax, but is not intended to operate as a denial of the power to collect poll and other classes of taxes. *Perry v. City of Rockdale*, 62 Tex. 451.

Construing R. S. 1895, Art. 420, and original Section 9 of Article 8, and this section, when a city, incorporated under the general law, had levied 25 cents on the \$100 worth of its assessed taxable property for current expenses, it could levy no other taxes, "except for the payment of debts already incurred" and "for the erection of public buildings." *Gould v. City of Paris*, 68 Tex. 517, 4 S. W. 650; *Water & Gas Co. v. City of Cleburne*, 1 C. A. 587, 21 S. W. 393.

The construction of a system of waterworks comes within the description of neither of these purposes, and a contract made with the city for such construction and contemplated levy by the city of a tax in excess of one-fourth of one per cent, allowed for "current expenses" was void. *Water & Gas Co. v. Cleburne*, 1 C. A. 587, 21 S. W. 393.

However, amended section of Art. 8, Section 9, expressly authorizes the issuance of bonds and the levy of a tax necessary to support bonds for the construction of waterworks, etc., but the tax rate, together with the rate required for all other improvement purposes, must come within the limit therein prescribed. (Amended Section 9 of Art. 8, adopted in 1906.)

A city of 10,000 inhabitants or less, incorporated under the general law, cannot levy a greater tax for all corporate purposes than is provided for in this section, saving those made the subject of special exception by the Constitution itself. *Gould v. City of Paris*, 68 Tex. 517, 4 S. W. 650.

By this section cities and towns of 10,000 and less were limited to one-fourth of one per cent to defray current expenses, while Section 5 allows cities containing more than 10,000, and operating under special charter, to tax to the amount of 2½ per cent, without limiting the amount, to be assessed for current expenses. *Lufkin v. City of Galveston*, 63 Tex. 437.

The Legislature had no power, under this section, to authorize a city of 10,000 or less to levy a special tax to pay its bonds or coupons, when it had already levied one-fourth of one per cent for current expenses. *Lufkin v. City of Galveston*, 63 Tex. 437.

This section, in effect, commands that a city with less than 10,000 inhabitants shall, in order to create a debt, take its latest assessment of property for taxes, and from that ascertain how much money a tax of

25 cents on each \$100 of valuation will produce; and it may create a debt that that amount will provide for the payment of the interest thereon and for sinking fund. *Citizens Bank v. City of Terrell*, 78 Tex. 450, 14 S. W. 1003.

Sections 4 and 5 of this article are couched in such language that, standing alone, the Legislature would be left free in the organization of cities and towns to prescribe their form of government. *Brown v. City of Galveston*, 97 Tex. 10, 75 S. W. 488.

The provision of this section making city taxes collectible only in current money does not apply to cities of over 10,000 inhabitants. *City of Houston v. Stewart*, 99 Tex. 76, 87 S. W. 663.

Provision of city charter authorizing the city, upon abandonment of plan of street improvements by assessments on abutting owners, to be followed by improvements with funds derived from general taxation, to issue refund certificates for the amounts paid, bearing coupons receivable for taxes, is not violative of this section. *City of Houston v. Stewart*, 99 Tex. 76, 87 S. W. 663.

Sections 4 and 5 of Article 11 prescribe the manner in which cities and towns may be incorporated for municipal purposes, and it is evident that in dealing with this matter the amendment to Section 3 of Article 7, adopted in 1883, had reference to towns incorporated for municipal purposes which, according to the provisions of the law as then or thereafter in force, had assumed control of their schools and thereby became independent school districts. *Snyder v. Baird Independent School District*, 102 Tex. 8, 111 S. W. 723.

The Legislature may, by special act, repeal the charter of a city of less than 10,000, and annex it to a city of over 10,000. *City of Oak Cliff v. State*, 77 S. W. 25, 97 Tex. 383.

The question whether a general law can be made applicable in any case is a question for the Legislature. *City of Oak Cliff v. State*, 77 S. W. 25, 97 Tex. 383.

The power given by this section to a city of less than 10,000 inhabitants was only the power to levy, assess and collect an annual tax to defray the current expenses of its local government, not exceeding, for any one year, one-fourth of one per cent. The power conferred upon a city to borrow money and create debts does not authorize the issuance of negotiable bonds. *Brenham v. German-American Bank*, 144 U. S. 181.

It will be presumed that the Legislature on granting a special charter to a city first ascertained the population, and its action in granting special charter is conclusive as to population. *McCormick v. Jester*, 115 S. W. 287, 53 C. A. 322; *State v. Larkin*, 41 C. A. 253, 90 S. W. 916; *Foster v. Hare*, 26 C. A. 177, 62 S. W. 541; *State v. Goodwin*, 69 Tex. 55, 5 S. W. 678; *Ewing v. State*, 81 Tex. 178, 16 S. W. 872; *Word v. Schow*, 29 C. A. 120, 68 S. W. 192; *Muller v. City of Denison*, 1 C. A. 296.

There is no reason why current improvements may not be paid for with current revenue; and no reason why the phrase "current expenses," although used in this section with reference to "general purposes," should be limited to liabilities incurred in respect to other funds, when the improvements are made to be paid for in the ordinary course, without postponement to future tax levies. *Sandmeyer v. Harris*, 7 C. A. 519, 27 S. W. 284.

23. Home Rule Amendment for Cities of Five Thousand and Over.—Cities having more than five thousand (5000) inhabitants

may by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the Legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State; said cities may levy, assess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year which shall exceed two and one-half per cent. of the taxable property of such city, and no debt shall ever be created by any city, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent thereon; and provided further, that no city charter shall be altered, amended or repealed oftener than every two years. [Const. Sec. 5, Art. 11, adopted at election November 5, 1912.]

There is no limit imposed on the Legislature as to the amount of tax it may authorize a municipal government to impose by way of assessments on property holders for local improvements within a city. Such assessments are not taxes and are not included within the limitation of this section. *Taylor v. Boyd*, 63 Tex. 542; *Roundtree v. City of Galveston*, 42 Tex. 612; *Adams v. Fisher*, 63 Tex. 651; *County of Harris v. Boyd*, 70 Tex. 237, 7 S. W. 713; *Nalle v. City of Austin*, 103 S. W. 826; *City of Austin v. Nalle*, 120 S. W. 996, 102 Tex. 536.

The issuance of city warrants account of expenses of the city, which do not exceed the current revenue derived from taxation, permitted by law to be levied to meet current expenses, and such other revenue as the city may have from other sources than taxation, is not the creation of a debt within the meaning of this section, requiring provision for interest and sinking fund. *City of Corpus Christi v. Woessner*, 58 Tex. 462.

Cities of 10,000 inhabitants operating under special charters are by this section excepted from the maximum limit of 25 cents on the \$100 valuation of property prescribed by Article 8, Sec. 9 of the Constitution and may levy ad valorem taxes to the extent of 2½ per cent on the \$100 for all purposes, when authorized by their charter. *Lufkin v. City of Galveston*, 63 Tex. 437; *Muller v. City of Denison*, 1 C. A. 293, 21 S. W. 392; *Cave v. City of Houston*, 65 Tex. 621.

By Section 4 of this Article, cities and towns containing 10,000 inhabitants and less were limited to one-fourth of one per cent to defray current expenses, while this section allows cities containing more than 10,000, and operating under special charter, to tax to the amount of 2½ per cent, without limiting the amount to be assessed for current expenses. *Lufkin v. City of Galveston*, 63 Tex. 437.

As to the power of taxation of cities of 10,000 inhabitants and over, this section supersedes Article 8, Section 9, and the city of Galveston was authorized to levy 99 cents on the \$100 for municipal purposes and 7 cents for an emergency fund. *Lufkin v. City of Galveston*, 63 Tex. 437.

Cities of ten thousand inhabitants or over, operating under special charter, have the power to make any apportionment of the $2\frac{1}{2}$ per cent tax limit they may see proper, provided the aggregate does not exceed the limit prescribed. *Lufkin v. City of Galveston*, 63 Tex. 437; *Muller v. City of Denison*, 1 C. A. 297, 21 S. W. 392.

The words "tax," "taxes," and "taxation," as used in the Constitution, without some qualifying word in reference to property, apply to ad valorem taxes. Those words when found in Article 11 refer to such taxation as the rule of equality and uniformity can, under well settled and long recognized rules, be applied to. *Taylor v. Boyd*, 63 Tex. 533; *Higgins v. Bordages*, 88 Tex. 462, 31 S. W. 52, 803.

This section has reference to such taxes as are annually collected for the ordinary purposes of municipal government, and based on an estimate of the value of the entire taxable property in a city. It has no application to assessments on property holders for local improvements adjoining their property and authorized by charter. *Taylor v. Boyd*, 63 Tex. 533.

There is nothing in the Constitution of the State which prohibits the levy of a street improvement tax by a city upon the owner of several lots liable therefor, in gross, instead of assessing it separately against each lot. *Taylor v. Boyd*, 63 Tex. 533.

A debt contracted by a city for current expenses is not within the class of debts contemplated in this section. *Dwyer v. City of Brenham*, 65 Tex. 526.

This section excepts from the operation of Article 8, Section 3, such municipal corporations as may have their charters amended by special law. Such cities may be authorized to levy and collect heavier taxes than those incorporated by general law, and one of such cities may be authorized to levy a heavier tax than another city of the same kind. *Cave v. City of Houston*, 65 Tex. 619.

The power of a city of the class mentioned in this section to levy $2\frac{1}{2}$ per cent for current expenses, and to meet further indebtedness, does not limit the power conferred by Section 6 of this article authorizing provision to be made for debts existing at the time the Constitution was adopted. *Voorhies v. Mayor*, 70 Tex. 331, 7 S. W. 679; *Mayor v. Voorhies*, 70 Tex. 356, 8 S. W. 111; *Jefferson v. Marshall National Bank*, 18 C. A. 545, 46 S. W. 100.

The requirement of this section and Section 7 that provision be made for the payment of interest and the creation of a sinking fund of at least 2 per cent of the amount of any municipal debt in order to give validity to the debt incurred, applies to all cities alike, without regard to the number of their inhabitants, or the manner of their incorporation. *City of Terrell v. Dessaint*, 71 Tex. 770, 9 S. W. 593; *Noel v. City of San Antonio*, 11 C. A. 584, 33 S. W. 263; *Peck v. City of Hempstead*, 27 C. A. 84, 65 S. W. 653; *City of Columbus v. Woonsocket, etc.*, 114 Fed. 165.

Where the rate of taxation which may be levied by a city is limited by the Constitution, a purchaser of bonds of such city is required to take the notice of the fact, if such limit was reached before the bonds were issued. *Peck v. City of Hempstead*, 27 C. A. 84, 65 S. W. 653.

Debts for the ordinary running expenses of a city, payable within a year out of the incoming revenues, do not come within the inhibition of this section prohibiting the creation of a debt without at the time making provision for interest and sinking fund. *City of Terrell v. Dessaint*, 71

Tex. 770, 9 S. W. 593; *Biddle v. City of Terrell*, 82 Tex. 335, 18 S. W. 691; *McNeal v. City of Waco*, 89 Tex. 83, 33 S. W. 322; *City of Dallas v. Brown*, 10 C. A. 621, 31 S. W. 298; *City of Cleburne v. Water Co.*, 14 C. A. 230, 37 S. W. 655.

From Article 8 on taxation, and Article 11 on municipal corporations, they (the framers of the Constitution) seem to have kept permanently in view two objects—one to protect the inhabitants of municipalities against oppressive taxation; the other, to protect the creditors and to preserve the financial honor of such corporations. *City of Terrell v. Dessaint*, 71 Tex. 773, 9 S. W. 593.

Any debt created by a city government for permanent improvements which cannot be discharged from the revenues of the current year, and which matures at a period which would make it a charge upon the city revenues for future years, is a debt within the meaning of this section and Section 7 of this article, and interest and sinking fund must be provided therefor. *City of Terrell v. Dessaint*, 71 Tex. 770, 9 S. W. 593; *McNeal v. City of Waco*, 89 Tex. 83, 33 S. W. 322; *City of Tyler v. Jester*, 74 S. W. 364, 97 Tex. 344; *City of Cleburne v. Mfg. Co.*, 127 S. W. 1073.

It was not intended by this section to prohibit the Legislature from providing for the incorporation of cities of 10,000 inhabitants by general law, but to confer authority to grant special charters; and such prohibition will not therefore be implied. *Werner v. City of Galveston*, 72 Tex. 28, 7 S. W. 726.

Proper provision for the payment of interest and the creation of a sinking fund is essential to the creation of debts by municipalities. This provision was designed not more to insure the payment of honest debts than to admonish the people whose property was being charged with them of that fact. *Citizens Bank v. City of Terrell*, 78 Tex. 450, 14 S. W. 1003.

A pledge of the revenues of the city's water works does not meet the requirement as to provision for interest and sinking fund. *Citizens Bank v. City of Terrell*, 78 Tex. 450, 14 S. W. 1003.

The holder of negotiable bonds, for value, is chargeable only with notice of that which is contained in the order authorizing their issuance; and a municipality is estopped from setting up any defense not disclosed in the order. *Nolen Co. v. State*, 83 Tex. 182, 17 S. W. 823; *Mitchell County v. Bank*, 91 Tex. 362, 43 S. W. 880; *Noel Bond & Stock Co. v. Mitchell County*, 21 C. A. 643, 54 S. W. 287; *City of Tyler v. Bldg. & Loan Assn.*, 99 Tex. 6, 86 S. W. 750.

The recital in bonds that they were "issued under and in compliance with the Constitution and laws of the State," will not protect a purchaser of such bonds, if the issue is unauthorized, or the law under which they are issued is unconstitutional. *Cass County v. Wilbarger County*, 25 C. A. 59, 60 S. W. 988.

This section requires that cities creating debts shall at the same time make provision for the payment of same by assessing a tax to pay the interest and to provide a sinking fund; and an obligation not so made cannot be enforced. This does not apply to current expenses. *Biddle v. City of Terrell*, 82 Tex. 335, 18 S. W. 691.

An obligation by a city to pay for the erection of a town hall and school building is not created for current expenses. *Biddle v. City of Terrell*, 82 Tex. 335, 18 S. W. 691.

Although Section 56 of Article 3 of the Constitution forbids special or

local laws, yet, this does not apply to the provisions of a charter granted to a city of over 10,000 inhabitants, which by virtue of this section of the Constitution may be enacted by special act. *City of Dallas v. Western Electric Co.*, 83 Tex. 243, 18 S. W. 552; *Investment Assn. v. Heirs of Pierre*, 10 C. A. 457, 31 S. W. 426; *Cravens v. State*, 57 Cr. App. 137, 122 S. W. 29; *City of Oak Cliff v. State*, 77 S. W. 25 (affirmed: 97 Tex. 383).

It is the purpose of the Constitution that the grant of power in the charter of a city having more than 10,000 inhabitants shall be complete without reference to any other law. *City of Dallas v. Western Electric Co.*, 83 Tex. 243, 18 S. W. 552.

As to effect of special charter exempting city from garnishment proceedings, see *City of Dallas v. Western Electric Co.*, 83 Tex. 243, 18 S. W. 552.

This section does not confer authority upon a city to create bonded indebtedness. It merely authorizes the Legislature to grant the power, and prescribes a limitation upon the grant. Its purpose was to fix a limit upon the power of taxation for municipal purposes, and to hedge it about with salutary restrictions. *City of Austin v. Nalle*, 85 Tex. 540, 22 S. W. 668, 960.

This section forbids the Legislature from granting the power to levy a tax in excess of 2½ per cent, but does not require that the limit shall be named. As to the limit of the taxing power, this section executes itself, with or without further legislation. *City of Austin v. Nalle*, 85 Tex. 540, 22 S. W. 668, 960; *Bassett v. City of El Paso*, 88 Tex. 175, 30 S. W. 893.

This section is complied with if there is an order providing for the annual collection by taxation of a "sufficient sum to pay the interest and create a sinking fund," etc., though it does not fix the rate or per cent of taxation for each year by which such sum is to be collected, but leaves the fixing of such rate for each successive year to the commissioners' court or city council. *Bassett v. City of El Paso*, 88 Tex. 175, 30 S. W. 893; *Mitchell County v. Bank*, 91 Tex. 370, 43 S. W. 880; *City of Jefferson v. National Bank*, 18 C. A. 544, 46 S. W. 100; *Wade v. Travis County*, 174 U. S. 504.

The word "valuation" means the value as fixed by competent authority for the purposes of taxation. *Citizens Bank v. City of Terrell*, 78 Tex. 450, 14 S. W. 1003; *Nolan Co. v. State*, 83 Tex. 195, 17 S. W. 823; *Morrill v. Smith County*, 89 Tex. 549, 36 S. W. 59.

This section and the statute contemplates that provision for interest and sinking fund should appear to be sufficient, based on existing values, and, unless it is so, the issue would not be valid; but provision that is more than sufficient does not affect the validity of the bonds. *Citizens Bank v. City of Terrell*, 78 Tex. 450, 14 S. W. 1003; *Bassett v. City of El Paso*, 88 Tex. 168, 28 S. W. 556.

Where a city, under its charter, levies taxes to the amount of two per cent, and then levies two and one-half per cent additional as a special assessment upon property for street improvements, making four and one-half per cent, when added to the general tax, such special assessment is not a tax upon a homestead for which it can be sold. *Higgins v. Bordages*, 88 Tex. 461, 31 S. W. 52, 803; *Storrie v. Cortes*, 90 Tex. 284, 38 S. W. 159; *Lovenberg v. Galveston*, 17 C. A. 163, 42 S. W. 1024.

Any attempted creation or incurring of a debt by a city without at the same time making provision for levying and collecting a sufficient tax to pay interest thereon and provide at least two per cent as a sinking fund, is void. *McNeal v. City of Waco*, 89 Tex. 86, 33 S. W. 322; *Howard*

v. Smith, 91 Tex. 8, 38 S. W. 15; Rubber Co. v. City of Cleburne, 22 C. A. 621, 56 S. W. 220; National Bank v. City of Dallas, 73 S. W. 841; City of Tyler v. Jester, 74 S. W. 364, 97 Tex. 344, 78 S. W. 1058.

The limitation of the power of taxation fixed by this section has no application to obligation payable out of either the current revenues of the year of the contract, or any other fund within the immediate control of the corporation. *McNeal v. City of Waco*, 89 Tex. 86, 33 S. W. 322; *City of Cleburne v. Cleburne Water Co.*, 14 C. A. 229, 37 S. W. 655; *City of Tyler v. Jester*, 97 Tex. 344, 78 S. W. 1058 (affirming: 74 S. W. 364).

Since the improvement (of the streets) was not a matter of current expense, and there was no fund at the date of the contract, within the control of the city, out of which it was to be paid, the obligation to pay for the improvement was a debt within the meaning of the Constitution, and since no provision was made for interest and sinking fund at the date of the contract, it was void and imposed no obligation upon the city to pay for the work. *Howard v. Smith*, 91 Tex. 15, 38 S. W. 15.

"Debt" means any pecuniary obligation imposed by contract except such as are at the date of the contract, within the lawful and reasonable contemplation of the parties, to be satisfied out of the current revenues for the year, or out of some fund then within the control of the corporation. *McNeal v. City of Waco*, 89 Tex. 88, 33 S. W. 322; *Howard v. Smith*, 91 Tex. 8, 38 S. W. 16; *City of Terrell v. Dessaint*, 71 Tex. 770, 9 S. W. 593; *City of Cleburne v. Mfg. Co.*, 127 S. W. 1073.

One claiming compensation under a contract with a city must show that the obligation was to be satisfied out of the current revenues or out of some fund within the immediate control of the city, or, he must prove compliance with the constitutional requirement that the necessary provision was made, at the time of creating the debt, for levying and collecting a sufficient tax to pay interest and provide a sinking fund to pay the principal when due. *McNeal v. City of Waco*, 89 Tex. 86, 33 S. W. 322.

The purchase by a city of a water and light plant, from a private corporation, created a debt which could not be contracted without providing a sinking fund for its retirement, though such purchase was a part of an arrangement for compromising other existing debts and judgments held by the Water and Light Company against the city. *City of Austin v. McCall*, 95 Tex. 576, 68 S. W. 791.

A taxpayer in a municipal corporation may enjoin the making of an illegal contract by its officers to create a debt against it. *City of Austin v. McCall*, 95 Tex. 576, 68 S. W. 791.

This article contains limitations upon the authority of municipal corporations to levy taxes and to incur debts, but Sections 4 and 5 of that article are couched in such language, that, standing alone, the Legislature would be left free in the organization of cities and towns to prescribe the form of government. *Brown v. City of Galveston*, 97 Tex. 10, 75 S. W. 488.

A note given by a city in payment for water works material, and payable two years after date, is a debt within the meaning of this section. *City of Terrell v. Dessaint*, 71 Tex. 770, 9 S. W. 593.

Houston city charter authorizing the refunding of special assessments collected of abutting property owners for street improvements, to be replaced by a fund derived from general taxation, is not unconstitutional.

The sum authorized to be refunded was not a debt within the meaning of this section requiring provision to be made for interest and sinking fund. *City of Houston v. Stewart*, 99 Tex. 76, 87 S. W. 664.

Section 4, this article, making city taxes collectible only in current money, does not apply to cities of 10,000 and over, operating under special charter. *City of Houston v. Stewart*, 99 Tex. 76, 87 S. W. 664.

This section prohibiting cities of over 10,000 inhabitants to levy taxes "for" any one year which shall exceed $2\frac{1}{2}$ per cent of the taxable property of the city, does not prohibit the city to levy "in" one year a tax omitted to be levied in a past year, so far as such tax is, in connection with other valid taxes, within the $2\frac{1}{2}$ per cent tax limit for such past year although the levy for which it is made may exceed the limit for that year. *City of Austin v. Cahill*, 99 Tex. 197, 88 S. W. 542, 89 S. W. 552.

Purchasers of bonds take the same subject to the law in force at the time of their issuance, including the constitutional limitation upon the taxing power of the city. *City of Austin v. Cahill*, 99 Tex. 197, 88 S. W. 542, 89 S. W. 552.

The neglect of a city to perform its contractual obligation to levy taxes at the time directed by law in order to meet the interest on bonds does not enable the city to escape that duty, but may be forced to perform the same by mandamus relating back to the time when the levy should have been made. *City of Austin v. Cahill*, 99 Tex. 197, 88 S. W. 542, 89 S. W. 552; *Wright v. City of San Antonio*, 50 S. W. 406.

The limitation on the amount of taxes to be annually collected by a city does not embrace local special assessments for street improvements. *City of Austin v. Nalle*, 102 Tex. 536, 120 S. W. 996.

A contract by a county for the improvement of court house, executed without provision being made to meet the debt as required by this section, was void, the general fund out of which the cost was intended to be satisfied not being sufficient to pay the current expenses and the sum called for by said contract. *Ault v. Hill County*, 102 Tex. 335, 116 S. W. 359 (affirming: 111 S. W. 425).

So long as the aggregate amount of taxation, for city purposes, for cities operating under special charters, does not exceed the constitutional and statutory limitation, such taxation is "authorized by law." The application of the tax fund, when collected is left to the discretion of the city authorities, in the absence of special statutory direction. *Muller v. City of Denison*, 1 C. A. 297, 21 S. W. 392.

The obligation of a city arising out of tort does not fall within the purview of this section requiring, at the time of the creation of a debt, provision for the interest and sinking fund. *City of Dallas v. Miller*, 7 C. A. 503, 27 S. W. 498.

A debt, within the meaning of this section, is not created when the current liabilities do not exceed the current revenue to be derived from taxation. *Sandmeyer v. Harris*, 7 C. A. 519, 27 S. W. 284; *Corpus Christi v. Woessner*, 58 Tex. 467; *City of Terrell v. Dessaint*, 71 Tex. 9, S. W. 593.

Bonds issued without provision being made for payment of interest and sinking fund as required by this section and Section 7 of this article, are wholly void. *Millsaps v. City of Terrell*, 8 C. A. 554; *Gould v. City of Paris*, 68 Tex. 517, 4 S. W. 650; *City of Terrell v. Dessaint*, 71 Tex. 770, 9 S. W. 593; *Citizens Bank v. City of Terrell*, 78 Tex. 450, 14 S. W. 1003; *Nolan Co. v. State*, 83 Tex. 182, 17 S. W. 823.

A city is not liable to contractors for extra street improvements directed by the city engineer, which were not included in the specifications or contract, and for which no provision was made as required by this section. The city is liable, however, for the money paid to it for such improvements by a railroad company agreeing to pay one-half of the expense thereof. *City of Dallas v. Brown*, 31 S. W. 298, 10 C. A. 612.

That portion of Section 56, Article 3, prohibiting the Legislature to pass any local or special law regulating the practice or jurisdiction of courts, or changing the rules of evidence in any judicial proceeding, has no application to acts of the Legislature granting special charters to cities of over 10,000 inhabitants. *Investment Assn. v. Heirs of Pierre*, 10 C. A. 457, 31 S. W. 426.

Such charters are expressly authorized by this section, and the Legislature may engraft upon such a charter any provision of law which it might enact by general law. A provision in such charter authorizing the city to make a tax deed executed by the city tax collector "prima facie evidence," etc., is a valid, and such deed is admissible in evidence without further proof. *Investment Assn. v. Heirs of Pierre*, 10 C. A. 457, 31 S. W. 426.

A contract by a municipal corporation for the construction of garbage furnaces, in payment for which it executed its notes payable annually for ten years, but made no provision at the time to collect annually a sufficient sum to pay the interest and create sinking fund as required by this section, was illegal and void. *Noel v. City of San Antonio*, 11 C. A. 583, 33 S. W. 263.

The provision of this section requiring provision to be made for interest and sinking fund, does not apply to an obligation payable out of the current revenues for each year, or out of other funds within the immediate control of the corporation. *City of Cleburne v. Cleburne Water Co.*, 14 C. A. 229, 37 S. W. 655.

A contract by a city with an individual that he should supply water for fire purposes free for three years, and after that at the rate of \$25.00 per hydrant, is not void as being the creation of a debt within this section requiring provision to be made for its payment. *City of Cleburne v. Water Co.*, 14 C. A. 229, 37 S. W. 655; *City of Tyler v. Jester*, 74 S. W. 359 (affirmed in 97 Tex. 344, 78 S. W. 1058.)

A contract between a city and electric light company whereby the latter agrees to furnish the city, for the term of three years, a specified number of electric lights at a stated annual rental, not exceeding the amount the city is authorized to collect and appropriate for such purpose each year, and under which payment is to be made only on the performance of the service provided for, does not create a debt within the inhibition of this section against the creation of a debt without making provision for the collection of a sufficient sum to pay interest and sinking fund. *Dallas Electric Co. v. City of Dallas*, 23 C. A. 323, 58 S. W. 153.

A city incorporated under the general law can issue bonds only to the extent that a tax of one-fourth of one per cent upon the value of all property subject to taxation, annually collected, will pay the interest on the bonds as the same become due, and will create a sinking fund sufficient to pay the bonds at the date of their maturity; and this applies to cities of over 10,000 inhabitants, as well as those of a population under 10,000. *City of Palestine v. Royall*, 16 C. A. 36, 40 S. W. 621.

Under this section, cities of over 10,000 inhabitants, operating under special charter, may "levy, assess and collect such taxes as may be authorized by law." There is no constitutional limitation upon the Legislature as to the mode and manner of levying, assessing and collecting taxes, the limitation being upon the amount of taxes. *Schollard v. City of Dallas*, 16 C. A. 624, 42 S. W. 640.

The limitation of the taxing power granted by this section of the Constitution, does not apply to bonds issued for debts existing prior to its adoption. *City of Jefferson v. Bank*, 18 C. A. 544, 46 S. W. 97.

Bonds issued by a municipal corporation are not invalid because the city made an arrangement to borrow the money with which to pay the interest and sinking fund for the first three years, where a tax for that purpose was actually levied for those years, the enforcement of the tax being merely postponed. *City of Jefferson v. Bank*, 18 C. A. 544, 46 S. W. 97.

A contract made by a city for the purpose of fire hose for a stated sum, payable within three years, without any provision being made for the levy of a tax to pay the debt, and with the constitutional limit of taxation having been reached prior thereto, is ultra vires and void. *Rubber Co. v. City of Cleburne*, 22 C. A. 621.

Where a city issues bonds, and there is a failure to make provision, at the time of their issuance, for the assessment and collection, annually, of a sufficient sum to pay the interest thereon and create at least 2 per cent sinking fund as required by this section, payment of the bonds cannot be enforced. *Peek v. City of Hempstead*, 27 C. A. 80; 65 S. W. 653.

Where bonds have been issued to the full amount authorized under the constitutional limit as to taxation, a purchaser of bonds thereafter issued is required to take notice of such fact. *Peek v. City of Hempstead*, 27 C. A. 80, 65 S. W. 653.

The employment of an architect to prepare plans for public buildings was not, where it was intended that the services should be paid for out of the city's current revenues, the creation of a debt coming within the purview of this section requiring that provision be made for payment of interest and sinking fund. *City of Houston v. Glover*, 40 C. A. 182, 89 S. W. 425.

The annual salary of city officers is not a debt, within the meaning of this section, but is payable out of the current revenue; and it is not essential to the city's liability for its payment that a fund should be provided for its liquidation. *City of San Antonio v. Serna*, 45 C. A. 343, 99 S. W. 875; *City of Tyler v. Jester*, 74 S. W. 359, 97 Tex. 344; *City of Oak Cliff v. Ethridge*, 76 S. W. 604; *City of San Antonio v. Tobin*, 101 S. W. 270.

This section, providing that "cities having more than 10,000 inhabitants may have their charters granted or amended by special act of the Legislature," and Section 56 of Article 3, providing that "the Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law," are harmonious. *Ex parte Wilson*, 14 Cr. App. 592.

The constitutional exception with regard to cities of more than 10,000 inhabitants, takes such cities out of the purview of the general law, whenever their amended charter provides a different rule or confers a greater power than that given by the general law. *Ex parte Wilson*, 14 Cr. App. 592.

This section of the Constitution excepts from the provision of Article 3, Section 56, as the passage of special and local legislation, cities of more than 10,000 inhabitants, which have had their charters granted or amended

by special act. *Cravens v. State*, 57 Cr. App. 137, 122 S. W. 29; *Ex parte Wilson*, 14 Cr. App. 592; *City of Oak Cliff v. State*, 77 S. W. 25 (affirmed in 97 Tex. 383); *Investment Assn. v. Heirs of Pierre*, 10 C. A. 457, 31 S. W. 426.

A taxpayer cannot enjoin an issue of bonds voted by a city which would be void, even in the hands of a bona fide purchaser, for lack of any provision for sinking fund to pay same when they mature, since neither he nor the city could suffer any injury from the issue. *Bolton v. City of San Antonio*, 21 S. W. 64.

A debt created by a city—other than current expenses—without making provision for its payment, is illegal and absolutely void, and creates no liability against the city or the taxpayer. *Bolton v. City of San Antonio*, 21 S. W. 64; *McNeal v. City of Waco*, 89 Tex. 83, 33 S. W. 322.

This section does not prohibit the investment of sinking fund otherwise than in the direct redemption of the bonds themselves. The investment by a city of the sinking fund provided for one series of bonds in the purchase of its own bonds of another series does not work a cancellation of such purchased bonds; such sinking fund may be invested in bonds maturing after the maturity of the bonds which the fund was collected to pay. *Elser v. City of Fort Worth*, 27 S. W. 739; *Conkling v. City of El Paso*, 44 S. W. 883.

A city is not liable on a contract for the construction of a sewer where no provision is made at the time of its execution for payment therefor, as required by this section, and it does not appear that the revenues of the city for that fiscal year are in excess of its ordinary expenses. *Kuhls v. City of Laredo*, 27 S. W. 791.

A petition in an action of debt against a city, which fails to allege that at the time of the creation of the debt provision was made by the city for its payment, is demurrable. *City of Waco v. McNeal*, 29 S. W. 1109; *McNeal v. City of Waco*, 89 Tex. 83, 33 S. W. 322; *Biddle v. City of Terrell*, 82 Tex. 335, 18 S. W. 691; *Water Co. v. City of Cleburne*, 1 C. A. 580, 21 S. W. 393; *City of Houston v. Potter*, 41 C. A. 392, 91 S. W. 389.

A contract made by the officers of a city for the paving and improvement of streets, to be paid for by the issuance of bonds to be delivered to the contractor on completion of the work, creates a debt; and where no provision is made at the time for interest and sinking fund, the contract is void, imposing no obligation on the city, and the delivery of the bonds or payment of the funds of the city on the contract would be an unlawful act on the part of the officers. *Howard v. Smith*, 91 Tex. 8, 38 S. W. 16.

A contract with a city for the construction of a bridge, to be paid for from funds on hand—the proceeds of bonds already issued—lawfully applicable to that purpose, is valid, though no provision was made, with the contract, for interest and sinking fund, since it is a cash transaction and only involves a debt already incurred. *Bridge Co. v. City of San Antonio*, 50 S. W. 408.

It is no objection to a debt that the provision for interest and sinking fund was made prior to the issuance of bonds to which it referred. *Bridge Co. v. City of San Antonio*, 50 S. W. 408.

Authority in a city charter for the passage of ordinances providing for funding of "existing debt," is not such debt as is referred to in this section. *Conkling v. City of El Paso*, 44 S. W. 883.

The term "created" as used in this section with respect to the pro-

vision that there shall not be created a debt without, etc., and used in a city charter, has reference to the time of the sale of the bonds. *City of Austin v. Nalle*, 71 S. W. 415; see *Moller v. City of Galveston*, 23 C. A. 693, 57 S. W. 1116.

The issuance of bonds does not create a debt until their sale and delivery. Although the taxable values may not be sufficient at the time the election is held, yet, if by the time the bonds actually become debts against the city, the taxable values are sufficient to pay the interest and provide the sinking fund, the bonds will be valid. *City of Austin v. Nalle*, 71 S. W. 415.

Contract by city for the erection of city hall, to be paid for in cash, with the city's option to execute interest bearing obligations for 25% of the price, payable in three annual installments, constituted a debt within the meaning of this section, and the city's failure to make provision for the annual assessment of a tax, at the time the contract was made to pay the same, rendered the contract void. *National Bank v. City of Dallas*, 73 S. W. 841.

And the intention of the city, at the time of making the contract, to sell real estate and apply the proceeds to the construction of the building, when no action was taken by the council, as a body, directing that such real estate or the proceeds thereof be applied to such purpose, would not exempt such contract from the requirement of this section. *National Bank v. City of Dallas*, 73 S. W. 841.

The creation of any debt for permanent improvements, of whatever form, without a compliance with the provision of this section and Section 7 of this article, forbidding the creation of a debt unless provision be made at the same time to assess and collect annually a sufficient sum to pay the interest and create a sinking fund of at least two per cent thereon, is prohibited. *City of Tyler v. Jester*, 74 S. W. 359 (affirmed: 97 Tex. 344, 78 S. W. 1058).

The requirement of this section that provision be made, at the time of the creation of a debt, does not apply to instruments merely acknowledging or extending the time of payment of valid existing obligations. *City of Tyler v. Jester*, 74 S. W. 359 (affirmed: 97 Tex. 344, 78 S. W. 1058).

A city cannot renew a debt barred by the statute of limitations without complying with this provision. *City of Tyler v. Jester*, 74 S. W. 359 (affirmed: 97 Tex. 344, 78 S. W. 1058).

Nor can a city, on the renewal of an existing debt, increase the rate of interest thereon, without complying with this provision. *City of Tyler v. Jester*, 74 S. W. 359 (affirmed: 97 Tex. 344, 78 S. W. 1058).

Nor can a city, on the renewal of an existing debt, provide for the payment of attorney's fees for its collection, without complying with this provision. *City of Tyler v. Jester*, 74 S. W. 359 (affirmed: 97 Tex. 344, 78 S. W. 1058).

Warrants for salary due aldermen are items of ordinary expenditure, and not the creation of a debt within the meaning of this section. *City of Tyler v. Jester*, 74 S. W. 359 (affirmed: 97 Tex. 344, 78 S. W. 1058).

An indebtedness incurred by a city for the purchase of cemetery property is not such a debt as a city can incur without complying with this section. *City of Tyler v. Jester*, 74 S. W. 359 (affirmed: 97 Tex. 344, 78 S. W. 1058).

An indebtedness incurred by a city in providing fire hydrants and water

for the protection of the city, under a contract providing that the hydrant rental should be paid quarterly, and where it was not shown that at the time when the contract was made, nor at the time the hydrants were furnished, the general revenues of the city were not sufficient to pay said rentals, was a matter of ordinary expenditure, and not the creation of a debt within the meaning of this section. *City of Tyler v. Jester*, 74 S. W. 359 (affirmed: 97 Tex. 344, 78 S. W. 1058).

Annual salary of a city officer is not a debt within the meaning of this section, but is payable out of the current expenses of the city. City ordinance providing for "two per cent" on the \$100 of property assessed as compensation of city assessor and collector, construed to mean "two cents," *City of Oak Cliff v. Etheridge*, 76 S. W. 604.

The power conferred by this section to enact special laws in relation to cities of more than 10,000 inhabitants, not only includes the power to grant charters, but the power by special law to amend them. *City of Oak Cliff v. State*, 77 S. W. 25 (affirmed: 97 Tex. 383).

It will be presumed that the Legislature on granting a special charter to a city first ascertained its population. *McCormick v. Jester*, 115 S. W. 287, 53 C. A. 319; *Ex parte Wilson*, 14 Cr. App. 592; *State v. Larkin*, 41 C. A. 253, 90 S. W. 916; *Foster v. Hare*, 26 C. A. 177, 62 S. W. 541; *State v. Goodwin*, 69 Tex. 55, 5 S. W. 678; *Ewing v. State*, 81 Tex. 178, 16 S. W. 872; *Word v. Schow*, 29 C. A. 120, 68 S. W. 192; *Muller v. City of Denison*, 1 C. A. 296.

A note given by a city, payable within the year of its execution, did not create a debt within the meaning of this section requiring sinking fund to liquidate it. *City of Cleburne v. Rubber Mfg. Co.*, 127 S. W. 1073.

The true test of whether a note given by a city was a debt within the meaning of this section, is: Does it impose a burden on the revenues of the city for future years? *City of Cleburne v. Rubber Mfg. Co.*, 127 S. W. 1073.

Bonds are valid to the amount, and only to the amount, that a tax contemporaneously levied will provide for, by paying the interest and creating a sinking fund of two per cent per annum; the sum to be determined by the last preceding assessment. *City of Columbus v. Woonsocket, etc.*, 114 Fed. Rep., 162.

City charter granted by special act, providing for city officers and their recall, is valid and does not violate any provision of the Constitution. *Bonner v. Belsterling*, 137 S. W. 1154.

Where a city took proceedings to improve a street, the cost to be paid, two-thirds from assessments on abutting property, and one-third by city bonds, that a part of the assessments levied were uncollectible, did not require that the city treat such uncollectible portion as a debt within the meaning of this section, requiring provision to be made for payment, etc. *City of Beaumont v. Masterson*, 142 S. W. 984.

24. Assessment and Collection of Taxes in Counties, Cities and Towns.—Counties, cities and towns are authorized, in such mode as may now or may hereafter be provided by law, to levy, assess and collect the taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken; but all such taxes shall be assessed and collected

separately from that levied, assessed and collected for current expenses of municipal government, and shall, when levied, specify in the act of levying the purpose therefor; and such taxes may be paid in the coupons bonds or other indebtedness for the payment of which such tax may have been levied. [Const. Art. 11, Sec. 6.]

This section authorizes without limit, the levy, assessment and collection of taxes for the purpose of paying interest and providing a sinking fund to satisfy any indebtedness existing at the adoption of the Constitution of 1876. *T. & P. Ry. Co. v. Harrison Co.*, 54 Tex. 124; *Dean v. Lufkin*, 54 Tex. 270; *Mayor v. Voorhies*, 70 Tex. 336, 8 S. W. 109.

This section requires the purpose for which such taxes are levied to be specified, and gives the taxpayer the privilege of paying the tax "in the coupons, bonds and other indebtedness for the payment of which such tax may have been levied." *Dean v. Lufkin*, 54 Tex. 265.

The illegality of a tax levied by the commissioners' court by reason of failure to specify the purpose for which it is levied, cannot be cured by subsequent order so specifying. *Dean v. Lufkin*, 54 Tex. 265.

"Article 11 of the Constitution, in so far as it refers to towns and cities, is principally devoted to a careful restriction upon their powers to tax. As to towns there is no provision indicating any authority to create a debt, nor any to issue bonds, except possibly for the purpose of paying any indebtedness which had accrued up to the time the Constitution went into effect." A town incorporated under the general law was without authority to create a debt and issue bonds for the purpose of purchasing a school building and site. *Waxahachie v. Brown*, 67 Tex. 527, 4 S. W. 207.

Interest coupons attached to municipal bonds are receivable for taxes; but in order for the holder to avail himself of such privilege, he must tender the coupons before suit is instituted for his taxes; otherwise the municipality will be entitled to a monied judgment for the taxes. *Bummell v. City of Houston*, 68 Tex. 10, 2 S. W. 740.

The limitation of the taxing power given in Section 5 of this article in no way operates as a limitation of the power of taxation conferred by this section relating to only such taxation as is necessary to raise amounts to pay municipal debts existing at the time the Constitution of 1876 was adopted. *Voorhies v. Mayor*, 70 Tex. 331, 7 S. W. 679; *City of Jefferson v. National Bank*, 18 C. A. 545, 46 S. W. 100.

The power of taxation conferred by this section is not a discretionary power, but was conferred to secure the rights of creditors, and must be exercised when necessary for their protection. To compel the exercise of this power, a complaining creditor is entitled to a writ of mandamus to compel the levy and collection of a sufficient tax to satisfy his debt. *Voorhies v. Mayor*, 70 Tex. 331, 7 S. W. 679.

This section has reference to debts existing at the date of the adoption of the Constitution, and a city may levy any tax necessary to provide for such a debt, though its charter limits its taxing power to two per cent ad valorem. *Voorhies v. Mayor*, 70 Tex. 331, 7 S. W. 679.

This section makes taxes collected under it a special fund which cannot be diverted and used for any other purpose. *City of Sherman v. Williams*, 84 Tex. 423, 19 S. W. 606.

A tax collected under authority of this section constitutes a special fund for the particular purpose for which it was levied, and is separate and distinct from taxes levied for current municipal expenses. Private property conveyed to a city in satisfaction of its tax collector for failure to account for money collected for the credit of such fund, stands in the place of the fund, and is not subject to execution in favor of a general judgment creditor of the city. *City of Sherman v. Williams*, 84 Tex. 423, 19 S. W. 606.

Under this section, R. S. 1895, Articles 416, 498, and Austin city charter, moneys collected pursuant to tax levies to accumulate sinking fund for bonds of the city, cannot be legally appropriated to the payment of interest on other bonds. *City of Austin v. Cahill*, 88 S. W. 541.

25. Providing for Seawall Taxes—Eminent Domain Granted.—

All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized, upon a vote of two-thirds of the taxpayers therein (to be ascertained as may be provided by law), to levy and collect such tax for construction of seawalls, breakwaters or sanitary purposes, as may be authorized by law, and may create a debt for such works and issue bonds in evidence thereof. But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent. as a sinking fund; and the condemnation of the right of way for the erection of such works shall be fully provided for. [Const. Art. 11, Sec. 7.]

It shall be the duty of the Legislature to provide by law, in all cases where State or county debt is created, adequate amounts for the payment of current interest, and two per cent as a sinking fund for the redemption of the principal; and all such laws shall be irrevocable until principal and interest are fully paid. (Const. 1869, Art. 12, Sec. 23.)

The provisions of this section and Section 5, requiring that upon the creation of a debt provision be made for interest and sinking fund, apply to all cities alike, without regard to the number of their inhabitants. *City of Terrell v. Dessaint*, 71 Tex. 770, 9 S. W. 593; *Noel v. City of San Antonio*, 11 C. A. 584, 33 S. W. 263; *Wade v. Travis County*, 81 Fed. Rep. 744; *City of Columbus v. Woonsocket*, etc., 114 Fed. Rep. 165.

Debts for the ordinary running expenses of a city, payable within a year, out of the incoming revenues, do not come within the meaning of the inhibition of this section prohibiting the creation of a debt without at the time making provision for interest and sinking fund. *City of Terrell v. Dessaint*, 71 Tex. 770, 9 S. W. 593; *Biddle v. City of Terrell*, 82 Tex. 335, 18 S. W. 691; *McNeal v. City of Waco*, 89 Tex. 83, 33 S. W. 322; *City of Dallas v. Brown*, 10 C. A. 621, 31 S. W. 298; *City of Cleburne v. Water Co.*, 14 C. A. 230, 37 S. W. 655.

Any debt created by a city government which cannot be discharged from the revenues of the current year, and which matures at a period which would make it a charge upon the city revenues for future years, is a "debt" within the meaning of Sections 5 and 7 of Article 11. *City of*

Terrell v. Dessaint, 71 Tex. 770, 9 S. W. 593; *McNeal v. City of Waco*, 89 Tex. 83, 33 S. W. 322; *City of Tyler v. Jester*, 74 S. W. 364, 97 Tex. 344; *City of Cleburne v. Mfg. Co.*, 127 S. W. 1073; *City of Houston v. Potter*, 41 C. A. 388, 91 S. W. 389.

A contract by a city for materials to improve municipal properties, which is to be paid one and two years, would be a "debt" within the meaning of Sections 5 and 7 of Article 11 of the Constitution. *City of Terrell v. Dessaint*, 71 Tex. 770, 9 S. W. 593.

The word "valuation" means the value as fixed by competent authority for the purposes of taxation. *Citizens Bank v. City of Terrell*, 78 Tex. 450, 14 S. W. 1003; *Nolan Co. v. State*, 83 Tex. 195, 17 S. W. 823; *Morrill v. Smith Co.*, 89 Tex. 549, 36 S. W. 59; *Francis v. Howard Co.*, 50 Fed Rep. 58.

This section is complied with if there is an order providing for the annual collection by taxation of a "sufficient sum to pay the interest thereon and create a sinking fund," etc., though it does not fix the rate or per cent of taxation for each year by which such sum is to be collected, but leaves the fixing of such rate for each successive year to the commissioners' court or city council. *Bassett v. City of El Paso*, 88 Tex. 175, 30 S. W. 893; *Mitchell County v. Bank*, 91 Tex. 370, 43 S. W. 880; *City of Jefferson v. National Bank*, 18 C. A. 544, 46 S. W. 100; *Wade v. Travis County*, 174 U. S. 504.

The word "debt" as used in Sections 5 and 7 of Article 11 of the Constitution, means any pecuniary obligation imposed by contract except such as are at the date of the contract, within the lawful and reasonable contemplation of the parties, to be satisfied out of the current revenues for the year, or out of some fund then within the control of the corporation. *McNeal v. City of Waco*, 89 Tex. 87, 33 S. W. 322; *Howard v. Smith*, 91 Tex. 8, 38 S. W. 16; *City of Terrell v. Dessaint*, 71 Tex. 770, 9 S. W. 593; *City of Cleburne v. Mfg. Co.* 127 S. W. 1073.

In an action on debt against a city, a petition which does not allege that at the creation thereof provision was made for its payment, etc., as required by Sections 5 and 7, Article 11, is demurrable. *McNeal v. City of Waco*, 89 Tex. 88, 33 S. W. 322; *Biddle v. City of Terrell*, 82 Tex., 335, 18 S. W. 691; *City of Waco v. McNeal*, 29 S. W. 1109; *Water & Gas Co. v. City of Cleburne*, 1 C. A. 580, 21 S. W. 393; *City of Houston v. Potter*, 41 C. A. 392, 91 S. W. 389.

A debt is created only to the extent that provision is made for the payment of interest and the creation of a sinking fund. *City of Terrell v. Dessaint*, 71 Tex. 770, 9 S. W. 593; *Gould v. City of Paris*, 68 Tex. 511, 4 S. W. 650; *McNeal v. City of Waco*, 89 Tex. 83, 33 S. W. 322.

This section of the Constitution is complied with when at the time of creating a debt, provision is made for the collection annually of a sufficient sum to meet the interest and provide a sinking fund therefor, though it does not fix the rate or per cent of taxation for each year by which such sum is to be collected, but leaves the fixing of such rate for each successive year. *Mitchell Co. v. Bank*, 91 Tex. 370, 43 S. W. 880; *Bassett v. City of El Paso*, 88 Tex. 168, 30 S. W. 893.

The requirement of this section is that provision shall be made at the time, or shall have been previously made, by which the rate of tax to be levied is so definitely fixed that it becomes merely a ministerial act to determine the rate to be levied. The Legislature has the power to make

all such provisions for counties and cities, or it may leave it to the officers of such corporation to make it when the debt is created; if made by either, it is sufficient. *Mitchell Co. v. Bank*, 91 Tex. 370, 43 S. W. 880; *Bassett v. City of El Paso*, 88 Tex. 168, 30 S. W. 893; *County of Presidio v. National Bank*, 20 C. A. 512, 44 S. W. 1069; *Watson v. DeWitt County*, 19 C. A. 165, 46 S. W. 1069; *Wade v. Travis County*, 174 U. S. 505.

The provision for interest and sinking fund required by this section means such fixed and definite arrangements for the levying and collecting of such tax as would become a legal right in favor of the holders of bonds, or persons to whom such debt might be payable. The law must itself provide or require the municipal authorities to levy and collect a tax sufficient to produce the minimum prescribed by the Constitution. *Mitchell County v. Bank*, 91 Tex. 371, 43 S. W. 880.

The provision of this section requiring provision to be made for the payment of interest and the creation of sinking fund, is not limited to Gulf coast counties and cities, but applies to all counties in the State. *Mitchell Co. v. Bank*, 91 Tex. 371, 43 S. W. 880; *Wade v. Travis Co.*, 174 U. S. 503.

Section 9, Article 8, and Sections 2 and 7 of Article 11, are self-executing in the sense that all laws which conflict are void, but do not in themselves authorize the levy of a tax. This authority must be derived from the Legislature. *Mitchell County v. Bank*, 91 Tex. 371, 43 S. W. 880.

Failure of the commissioners' court to make provision for interest and sinking fund for county bonds does not invalidate them, as the requirement of this section in regard thereto is fully met by an act of the Legislature requiring that such provision be made; and mandamus will lie to compel the court to levy and collect the necessary tax to provide therefor. *Mitchell County v. Bank*, 91 Tex. 365, 43 S. W. 880; *Presidio County v. National Bank*, 20 C. A. 511, 44 S. W. 1069; *Hardeman Co. v. Foard Co.*, 19 C. A. 212, 47 S. W. 30, 536; *Wright v. City of San Antonio*, 50 S. W. 407; *Bridge Co. v. City of San Antonio*, 50 S. W. 408.

A contract for the construction of improvements to a county court house, without the levy of a special tax to provide for its payment, and where the entire general revenue of the county was needed to meet its current expenses, was unlawful. *Ault v. Hill County*, 102 Tex. 335, 116 S. W. 359.

An obligation of a city arising out of torts does not fall within the purview of this section, requiring the levy of a tax for its payment. *City of Dallas v. Miller*, 7 C. A. 530, 27 S. W. 498.

A city is not liable to contractors for extra street improvements directed by the city engineer, which were not included within the specifications or contract, for which no provision for payment was made as required by Sections 5 and 7 of Article 11, of the Constitution. It is liable, however, for money paid to it for such improvements by a railway company agreeing to pay one-half the expense thereof. *City of Dallas v. Brown*, 10 C. A. 616, 31 S. W. 298.

The expense of printing of delinquent tax lists is an item of ordinary municipal expenditure, and it is not requisite that provision should be made for the payment of such a debt at the time of its creation. *City of Wichita Falls v. Skeen*, 18 C. A. 632, 45 S. W. 1037.

This section giving authority to counties and cities bordering on the Gulf of Mexico to create a debt for construction of sea-walls, breakwaters and sanitary purposes upon a vote of the taxpayers as may be au-

thorized by law, does not prohibit the Legislature from giving the power to be exercised in some other manner; and an act authorizing the issuance of drainage bonds by a city was valid notwithstanding it was not submitted to a vote of the taxpayers. *Moller v. City of Galveston*, 23 C. A. 701, 57 S. W. 1116.

Municipal bonds are not rendered invalid by the fact that they are not issued for nearly two years after the passage of the ordinance providing for them, nor by the fact that, as authorized by the ordinance, they are antedated. *Moller v. City of Galveston*, 23 C. A. 701, 57 S. W. 1116.

The law authorizing the issuance of bonds to fund county warrants issued for current expenses is not violative of this provision of the Constitution and interest and sinking fund may be provided for out of current expense tax. *Cass Co. v. Wilbarger Co.*, 25 C. A. 59, 60 S. W. 988.

The employment of an architect to prepare plans and specifications for public buildings was not, where it was intended that the service should be paid for out of the city's current revenues, the creation of a debt within the purview of Sections 5 and 7 of Article 11. *City of Houston v. Glover*, 40 C. A. 182, 89 S. W. 425.

This section does not prohibit the investment of the sinking fund otherwise than in the direct redemption of the bonds themselves. Investment by a city of the sinking fund provided for one series of bonds in the purchase of its own bonds of another series does not work a cancellation of such purchased bonds. Such sinking fund may be invested in bonds maturing after the maturity of the bonds which the fund was collected to pay. *Elser v. City of Fort Worth*, 27 S. W. 739.

City charter providing that provision shall be made for a levy of two per cent to create a sinking fund to pay bonds is not amended, in respect to the amount of levy for sinking fund, by this section, providing for "at least" two per cent to create a sinking fund to pay debts. *Conklin v. City of El Paso*, 44 S. W. 883.

"Existing debt" referred to in city charter, providing that necessary ordinances may be passed to provide for funding an "existing debt," is not the character of debt referred to in Sections 5 and 7 of Article 11 of the Constitution, providing that no "debt" shall be created without making provision for its payment by a tax levy. *Conklin v. City of El Paso*, 44 S. W. 880.

The provisions of Sections 5 and 7, requiring that provision be made for the payment of debts, do not apply to an ordinance under which bonds are issued for a debt incurred prior to the adoption of the Constitution. *City of Jefferson v. National Bank*, 46 S. W. 100, 18 C. A. 544.

Nor where levies were directed as the Constitution requires, would the fact that a city arranged not to enforce collection during several initial years, and to pay the interest and sinking fund with borrowed funds, affect the validity of bonds issued for a debt incurred subsequent to its adoption. *City of Jefferson v. National Bank*, 46 S. W. 100, 18 C. A. 544.

A valid debt may be created by a city without complying with this section requiring that it provide for payment at the time it is created, where it has a fund on hand, under its control, from which it contemplates the debt shall be paid, though it was not in fact paid therefrom, and it remained unpaid and unprovided for until the passage of a subsequent ordinance. *Winston v. City of Fort Worth*, 47 S. W. 740.

The creation by a municipality of any debt for permanent improve-

uments of whatever form, without a compliance with this section, requiring that provision be made for its payment, is prohibited. *City of Tyler v. Jester*, 74 S. W. 359 (affirmed: 97 Tex. 344, 78 S. W. 1058).

This provision does not apply to instruments merely acknowledging or extending the time of payment of valid existing obligations. *City of Tyler v. Jester*, 74 S. W. 359; (Affirmed, 97 Tex. 344, 78 S. W. 1058.)

Act of the Legislature, 1901, giving effect to this section of the Constitution, authorizing counties and cities bordering on the coast of the Gulf of Mexico to construct sea-walls authorizes a county bordering on the Gulf to construct a sea-wall within the limits of a city in the county. *Johnson v. Galveston County*, 85 S. W. 516.

In the absence of special legislative authority, a county has no authority to issue bonds. *Robertson v. Breedlove*, 61 Tex. 316; *Nolan County v. State*, 83 Tex. 190, 17 S. W. 826; *Ball v. Presidio Co.*, 88 Tex. 64, 29 S. W. 1043.

The holder of negotiable bonds, for value, is chargeable only with notice of that which is contained in the order authorizing their issuance; and a municipality is estopped from setting up any defense not disclosed in the order. *Nolan Co. v. State*, 83 Tex. 182, 17 S. W. 823; *Mitchell Co. v. Bank*, 91 Tex. 362, 43 S. W. 880; *City of Tyler v. Bldg. & Loan Assn.*, 99 Tex. 6, 86 S. W. 750; *Citizens Bank v. City of Terrell*, 78 Tex. 450, 14 S. W. 1003.

A city cannot renew a debt barred by the statute of limitations without complying with Const. Art. 11, Sections 5 and 7 forbidding the creation of a debt unless provision is made at the same time to assess and collect annually a sufficient sum to pay the interest, and create a sinking fund of at least 2 per cent thereon. *City of Tyler v. Jester*, 74 S. W. 359; (Affirmed, 97 Tex. 344, 78 S. W. 1058.)

A city cannot, on the renewal of an existing debt, increase the rate of interest thereon, without complying with Const. Art. 11, Sections 5 and 7. *City of Tyler v. Jester*, 74 S. W. 359; (Affirmed, 97 Tex. 244, 78 S. W. 1058.)

A city cannot on the renewal of an existing debt, provide for the payment of attorneys' fees for its collection, without complying with Const., Art. 11, Secs. 5 and 7. *City of Tyler v. Jester*, 74 S. W. 359; (Affirmed, 97 Tex. 344, 78 S. W. 1058.)

An indebtedness incurred by a city in providing fire hydrants and water for the protection of the city, under a contract providing that the hydrant rental should be paid quarterly, and where it was not shown that at the time the contract was made, nor at the time the hydrants were furnished, the general revenues of the city were not sufficient to pay said rentals, was a matter of ordinary expenditure, and not the creation of a debt within the meaning of Sections 5 and 7 of Article 11. *City of Tyler v. Jester*, 74 S. W. 359; (Affirmed, 97 Tex. 344, 78 S. W. 1058.)

Commissions of a broker for the sale of county lands, under contract with the commissioners' court, does not create a debt, within the meaning of this section of the Constitution, requiring provision to be made for its payment. *Sandifer v. Foard County*, 134 S. W. 823.)

Const. Art. 11, Sections 5 and 7, authorizing municipal corporations to levy taxes, etc., have no application to proceedings for the improvements of streets, the cost to be paid in cash, two-thirds to be derived from special

assessments on abutting property, and the other one-third in improvement bonds of the city. *City of Beaumont v. Masterson*, 142 S. W. 984.

26. Legislative Donations for Construction of Seawalls.—The counties and cities on the gulf coast being subject to calamitous overflows, and a very large porportion of the general revenue being derived from those otherwise prosperous localities, the Legislature is especially authorized to aid by donation of such portion of the public domain as may be deemed proper, and in such mode as may be provided by law, the construction of seawalls, or breakwaters, such aid to be proportioned to the extent and value of the works constructed, or to be constructed, in any locality. [Const. Art. 11, Sec. 8.]

See Chap. 116, Acts 1917, page 306, remitting State taxes to City of Corpus Christi.

See page 55, Acts 1917, remitting taxes to Galveston.

See, also, Chapters 32 and 61, Acts 1917, which are bills of the same character.—Editor.

27. Certain Property to Be Exempt From Taxation.—The property of counties, cities and towns, owned and held only for public purposes, such as public buildings and the sites therefor, fire engines and the furniture thereof, and all property used, or intended for extinguishing fires, public grounds and all other property devoted exclusively to the use and benefit of the public, shall be exempt from forced sale and from taxation; provided, nothing herein shall prevent the enforcement of the vendor's lien, the mechanic's or builder's lien, or other liens now existing. [Const. Art. 11, Sec. 9.]

See Chap. 31, this volume.

The exemptions contained in this section embrace all taxation, special as well as general. *County of Harris v. Boyd*, 70 Tex. 237, 7 S. W. 713.

The power of a city to levy and collect taxes when claimed against the county as the owner and against country property as a lien does not extend to property owned by the county and used by it for county court house. *County of Harris v. Boyd*, 70 Tex. 237, 7 S. W. 713.

This section, and Section 6 of Article 7, exempt from taxation lands held by counties for public free school purposes; and such lands are not subject to taxation, though they are leased. *Dougherty v. Thompson*, 71 Tex. 192; 9 S. W. 99; *Davis v. Burnett*, 77 Tex. 3, 13 S. W. 613; *Land & Cattle Co., v. Board*, 80 Tex. 489, 16 S. W. 312.

The Constitutional exemption of county school lands does not apply where such lands have been sold by the county, although the sale is by executory contract only. *Taber v. State*, 38 C. A. 235, 85 S. W. 835.

Private residence property accepted by a city in settlement of a claim held by it, and which property is not used by the city for public purposes, is not exempt from execution under the provisions of this section. *City of Sherman v. Williams*, 84 Tex. 421, 19 S. W. 606.

The property of a city, not held or used for governmental purposes, the seizure of which would not impair the exercise of its governmental functions, is subject to execution. *City of Laredo v. Benavides*, 25 S. W. 482.

Taxes and public revenue of a city cannot be seized under execution against it, nor property acquired in the collection of same. *Gordon v. Thorp*, 53 S. W. 361.

The timber on county school lands is exempt from taxation under this section of the Constitution, so long as it is owned by the county, but, when sold, is not exempt from taxes levied after the sale, though not severed from the land. *Montgomery v. Peach River Lumber Co.*, 117 S. W. 1062, 124 S. W. 904.

28. Special Tax to Be Levied for School Purposes, When.—The Legislature may constitute any city or town a separate and independent school district. And when the citizens of any city or town have a charter, authorizing the city authorities to levy and collect a tax for the support and maintenance of a public institution of learning, such tax may hereafter be levied and collected, if, at an election held for that purpose, two-thirds of the taxpayers of such city or town shall vote for such tax. [Const. Art. 11, Sec. 10.]

The construction given this section by the legislative and executive departments, to the effect that, "at whatever time an incorporated town may assume control of its public schools, it may thereafter levy a school tax, if two-thirds of its property taxpayers shall so vote," followed, but questioned. *City of Fort Worth v. Davis*, 57 Tex. 226.

Where there is doubt as to the meaning of a Constitutional provision, the courts will give effect to the executive and legislative construction; but, where the meaning is clear and unambiguous the courts will disregard such construction and give it proper effect. *City of Fort Worth v. Davis*, 57 Tex. 226.

This section requires an affirmative vote of two-thirds of all the property taxpayers for the levy of a tax. The language "if two-thirds of the taxpayers of such city or town shall vote for such tax," precludes an implied assent to such tax by not voting therefor at an election held to determine such tax. *City of Fort Worth v. Davis*, 57 Tex. 226.

Cities and towns have no power to levy taxes for school purposes other than as expressly authorized by the Constitution. *City of Fort Worth v. Davis*, 57 Tex. 226.

A city which has assumed control of its schools may, by the requisite two-thirds vote of the taxpayers within its limits, levy, assess and collect a school tax. *Dwyer v. Hackworth*, 57 Tex. 245; *Perry v. City of Rockdale*, 62 Tex. 451; *Werner v. City of Galveston*, 72 Tex. 29, 7 S. W. 726.

Under this section, before a tax can be levied by any city, or town for the support of its public schools it must first be voted, and before an election can be had, such city or town must first have authority to control the schools. *City of El Paso v. Conklin*, 91 Tex. 539, 44 S. W. 988.

A special tax levied by a city, (a de facto school corporation) is valid. *City of El Paso v. Ruckman*, 92 Tex. 91, 46 S. W. 25.

The language of this section "the Legislature may constitute any city or

town a separate and independent school district is clearly permissive only, and does not make it the duty of the Legislature to constitute every incorporated town or city a separate school district. *State v. Brownson*, 94 Tex. 440, 61 S. W. 114.

This provision would hardly have been inserted if amended Section 3 of Article 7 had been a part of the original instrument. *State v. Brownson*, 94 Tex. 440, 61 S. W. 114.

Under the amendment, the Legislature clearly has the power to make a city or town an independent district, even had there been no express provision to that effect. Therefore, the express provision, although not repealed, is practically superseded by the amendment. *State v. Brownson*, 94 Tex. 440, 61 S. W. 114.

The creation of an independent school district is not made invalid by the fact that it includes, within larger limits, an incorporated city. *State v. Brownson*, 94 Tex. 440, 61 S. W. 114.

Construing this section and Article 7, Section 3, a corporation for school purposes only is not an incorporated city or town as specified in the Constitution, but is simply the incorporation of a school district which may embrace the town or city only, or it may embrace a town or city and rural territory. *Snyder v. Baird Independent School District*, 102 Tex. 8, 111 S. W. 773.

Act of the Thirtieth Legislature authorizing the creation of an independent school district of a city and rural territory, in so far as it attempted to empower such district to levy a tax in excess of 20c on the \$100.00 is unconstitutional and void. *Snyder v. Baird Independent School District*, 102 Tex. 8, 111 S. W. 723, 113 S. W. 521; (affirming 109 S. W. 472); (see Const. Art. 7, Sec. 3.)

A corporation for school purposes only is not such an incorporated city or town as is referred to in this section of the Constitution. *Jenkins v. DeWitt Co.*, 115 S. W. 610.

The Legislature does not possess unlimited power in the formation of districts, and has no authority to disregard county lines in the formation of school districts, notwithstanding this section. *Parks v. West*, 102 Tex. 11, 111 S. W. 726.

To authorize the recovery by a city of a judgment fixing a lien upon land for an unpaid school tax, it must be alleged and proven that such city had been duly organized into a separate school district. *McCombs v. City of Rockport*, 14 C. A. 561, 37 S. W. 988.

Cities incorporated under the general law cannot levy a tax for school purposes except under certain conditions; citing Constitution, Article 11, Section 10. *McComb v. City of Rockport*, 14 C. A. 561, 37 S. W. 988.

Under this section, the Legislature is without authority to confer upon the county school superintendent the power of appointment of school trustees for towns and villages incorporated for free school purposes where the duly elected trustees hold over after the expiration of their term because of a failure to elect trustees to succeed them. *Stewart v. Purvis*, 20 C. A. 648, 50 S. W. 204.

In expressly declaring that the trustees of a town or village incorporated for free school purposes "shall be elected," the Legislature excludes their selection by appointment. *Stewart v. Purvis*, 20 C. A. 648, 50 S. W. 204.

Act of Twenty-eighth Legislature authorizing incorporated towns constituting separate and independent school districts to enlarge the district

by adding new territory thereto, is not violative of this section, nor of Section 3 of Article 7 of the Constitution. *Botsch v. Byrom*, 37 C. A. 39, 83 S. W. 20; *State v. Brownson*, 94 Tex. 436, 61 S. W. 114.

This section authorizes a city, controlling its public schools, to use a tract of land for school purposes that had been originally donated for the purpose of establishing and maintaining a school for the education of the white youths of the county, where the donor had made no grant of use to a sectarian school. *Pierce v. Weaver*, 65 Tex. 49; see *English v. Johnson*, 42 C. A. 124; 95 S. W. 561.

Act of the Legislature, 1891, authorizing towns and villages incorporated for free school purposes only, to levy taxes and issue bonds, is in conformity with this section of the Constitution. *Geib v. State*, 31 Cr. App. 514, 21 S. W. 190.

An independent school district created under authority of this section and Section 3 of Article 7, is not such a subdivision of the county as might adopt local option. A city or town, under Section 20, Article 16, may in its municipal capacity adopt local option. *Ex parte Haney*, 51 Cr. App. 636, 103 S. W. 1155.

This section, conferring authority on the Legislature to constitute any city or town a separate and independent school district, though not expressly repealed, was superseded by the amendment to Section 3 of Article 7. *Cummins v. Gaston*, 109 S. W. 476.

By this section and Section 3 of Article 7, as amended in 1883, two distinct classes of independent school districts are authorized: First, a class in which an incorporated city or town may be included, together with contiguous territory outside of the limits of the city or town, in which the district trustees can levy a special tax not to exceed 20c on the \$100.00, upon the voting of such tax; second, a class in which the limits of the school district are confined to those of a municipality, to which district the limitation in Section 3 of Article 7, does not apply. *Cummins v. Gaston*, 109 S. W. 476.

Laws 1905, p. 302, Sec. 148, authorizing extension of city limits for school purposes only on the affirmative vote of a majority of the qualified voters of the territory which is to be included, in so far as it does not require that the city shall surrender control of its public schools theretofore assumed, is not in conflict with this section of the Constitution. *City of Eagle Lake v. Lakeside Sugar Ref. Co.*, 144 S. W. 709. (See Const., Art. 7, Sec. 3.)

CHAPTER II.

METHOD OF ASCERTAINING RATE OF TAXATION.

(From Chap. 1, Title 126, R. S.)

	SEC.		SEC.
Automatic Tax Board to Calculate		Duty of Comptroller to Certify	
Tax Rate—How Constituted.....	29	Tax Rate to County Assessors....	32
Duty of Tax Assessor to Make		Duty of Commissioners' Courts to	
Certificate to Comptroller.....	30	Calculate the County Tax Rate,	
Method to Be Followed by Board		When	33
in Arriving at Tax Rate.....	31	Poll Tax to Be Levied and Col-	
		lected Annually	34

29. Automatic Tax Board to Calculate Tax Rate—How Constituted.—The Governor, Comptroller of Public Accounts, and Treasurer of this State, are constituted a board to calculate the ad valorem tax to be levied and collected each year for State and public free school purposes. [Art. 7349, R. S., Act 1907, p. 464, Sec. 1.]

Taxes constituting available school funds of State and County. See Arts. 2725 and 2726, R. S. 1911.

Where the Legislature itself declared a law and levied a tax and orders its assessments and collecting, leaving merely the rate of tax to be ascertained by a mathematical compensation upon a rule prescribed by the act, and imposing the duty of ascertaining the rate upon the board named, leaving nothing to their discretion, such legislation is unobjectionable upon constitutional grounds. Opinion of the Attorney General, p. 137, Report of 1906 to 1908, upholding the automatic tax law.

NOTE.—The automatic tax board law has never been passed upon by the courts of this State.

Taxes constituting school funds, see Art. 7, Sections 3, 3a and 5, Constitutional Provisions, and Arts. 2725 and 2726, R. S. 1911, and Acts of Thirty-fifth Legislature, the bill to aid rural schools.

NOTE.—See Ruling of Attorney General at end of this chapter.

30. Duty of Tax Assessor to Make Certificate to Comptroller.—It shall be the duty of the tax assessor of each county in this State to make to the Comptroller of Public Accounts, on or before the fifteenth day of July of each year a statement, showing as nearly as can be ascertained from his inventories or assessments, the total amount of property in each county subject to taxation; provided, that the tax for State and public free school purposes shall not be calculated and carried out upon said rolls. [Art. 7350, R. S., as amended 1909.]

Duties of Comptroller of Public Accounts. See Title 65, Chap. 2, R. S. 1911.

31. Method to Be Followed by Board in Arriving at Tax Rate.—

Within five days after the Comptroller of Public Accounts has received such certified statements from every assessor within this State, said board shall meet for the purpose of calculating the ad valorem rate for taxes to be collected for the State and public free school purposes. In calculating said rates, the board shall calculate the same by the following rules and upon the following basis: They shall find, by adding together all the property subject to taxation in all the counties as shown by the certified statements returned by the assessors, the total valuation of all property within this State subject to ad valorem taxes. They shall find, by adding together the sums appropriated by the Legislature, which will or which may become due by the State during the following fiscal year, the total sum which will or which may become due by the State, during the following fiscal year. They shall find, by adding all sums paid into the State Treasury as taxes for State purposes from all sources other than as ad valorem taxes during the first half of the current calendar year and the latter half of the last preceding calendar year, the total sum paid into the State Treasury from said sources during said time. They shall find, by subtracting from the total sum which will or which may become due by the State during the next succeeding fiscal year the total sum which was paid into the State treasury as taxes for State purposes during the first half of the current calendar year and the latter half of the last preceding calendar year, the total sum for State purposes which must be collected by ad valorem taxes. They shall add to such remainder twenty per cent of said remainder. They shall divide the total sum for State purposes which must be collected by ad valorem taxes added to twenty per cent of such total sum by the quotient of the total valuation of all property within this State divided by one hundred. The quotient shall be the number of cents on the one hundred dollars valuation to be collected for the current year for State purposes; provided, that said quotient shall not be run to more than three decimals, and provided that the rate for State purposes shall never exceed the rate fixed by law on the one hundred dollars valuation of property. In calculating the rate to be collected for public free school purposes, the said board shall take into consideration the number of children in the State within the scholastic age to be determined from the most recent official school census; and shall fix a rate that will yield and produce for such fiscal year four dollars per capita for all the children within the

scholastic age, as shown by said scholastic census; provided, the rate so fixed for any year shall never exceed the rate fixed by law. [R. S. Art. 7351, Acts 1907, p. 464.]

The Legislature may itself declare the law, levy the tax and order its assessment and collection, leaving merely the rate of tax to be ascertained by a mathematical computation upon a rule prescribed by the act, and imposing the duty of ascertaining the rate upon the board named, leaving nothing to their discretion, which is unobjectionable upon constitutional grounds. Ruling of the Attorney General, p. 137, 1906-1908.

The State may exercise its sovereign power to levy and collect taxes only on condition that they be used for general purposes. *Waples v. Marrest* (Sup.), 184 S. W. 180.

"There is a difference between making a law and giving effect to the law; the one is legislation, and the other administration. We conceive that the Legislature must, in every instance, prescribe the rule under which taxation must be laid; it must originate the authority under which, after due proceedings, the tax gatherer demands a contribution; but it need not describe all the details of action, or even fix with precision the sum to be raised, or all the particulars of its expenditures. If the rule is prescribed in which, in its administration, works out the result, that is sufficient, but to refer the making of the rule to another authority, would be in excess of the legislative power." *Cooley on Taxation*, p. 100.

Duties of Comptroller of Public Accounts. See Title 65, Chap. 2, R. S. 1911.

32. Duty of Comptroller to Certify Tax Rate to County Assessors.—It shall be the duty of the Comptroller of Public Accounts to certify to the assessor of taxes of each county in this State, through registered letter, the rate of taxes for State purposes and for public free school purposes for the current year, and shall also publish immediately such rate for thirty days in some newspaper published in the State and having a general circulation therein; and as soon as such tax assessor has received notice of such rate he shall calculate the taxes due the State for State purposes, and also the taxes due for public free school purposes, on all taxable property within his county, as set out in Article 7351, and shall carry the same out upon the copies of the tax rolls of the county to be delivered to the tax collector and to the clerk of the county court and to be returned to the Comptroller of Public Accounts, as provided by law. After he has so completed the said copies of the tax rolls, he shall return to the Comptroller of Public Accounts a copy of same. [R. S. Art. 7352.]

33. Duty of Commissioners' Court to Calculate the County Tax Rate, When.—The commissioners' courts of the several counties of this State, all the members thereof being present, at either a regular or special session, may at any time after the tax assessors of their

respective counties have forwarded to the Comptroller of Public Accounts the certificate required in Article 7350 and prior to the time when the tax collector of such county shall have begun to make out his receipts, calculate the rate and adjust the taxes levied in their respective counties for general purposes to the taxable values shown by the assessment rolls. [R. S. Art. 7353.]

The Constitution makes the commissioners' court the governing body for the county's business proper. *Jernigan v. Finley*, 90 Tex. 212, 38 S. W. 24.

Commissioners' courts not given general authority over the county's business, but merely such special powers as are specifically conferred upon them by the Constitution and laws of the State. *Mills County v. Lampasas County*, 90 Tex. 602, 40 S. W. 404; *Bland v. Orr*, 90 Tex. 492, 39 S. W. 558; *Baldwin v. Travis County*, 40 C. A. 149, 88 S. W. 484.

Taxes are burdens and charges imposed by law, upon persons or property to raise money for public purposes. *Clegg v. State*, 42 Tex. 608.

Taxes are the enforced proportional contributions of persons and property, levied by authority of the State for the support of the government and for all public needs. *McFadden v. Langham*, 58 Tex. 584; *Harris County v. Boyd*, 70 Tex. 240.

The word "tax" means burden, charge or imposition, put or set upon persons or property, for public use. *Ex parte Cooper*, 3 Tex. App. 493.

The essentials of a valid tax are: A levy by competent legislative authority, and a valid assessment by the officer or tribunal to whom this duty is committed by law. *George v. Dean*, 47 Tex. 73.

Taxes are equal and uniform when all persons or class of persons in the territory are taxed at the same rate upon the same value or thing. *Norris v. City of Waco*, 57 Tex. 635.

State taxes are levied by general laws, and are not required to be proven. County taxes are levied by the commissioners' court, and must be proven. The tax deed is not admissible to show that the commissioners' court levied the county tax. *Greer v. Howell*, 64 Tex. 688; *Houston v. Washington*, 41 S. W. 135.

Laws levying taxes for general purposes have no reference to taxes assessed under special authority. *Austin v. G. C. & S. F. Ry. Co.*, 45 Tex. 234.

A repeal of tax laws does not affect the right of the State to collect taxes levied under them but not collected at the time they are repealed. *Clegg v. State*, 42 Tex. 605.

The words "tax," "taxes" and "taxation," as used in the Constitution, without some qualifying word, apply only to ad valorem taxes. *Taylor v. Boyd*, 63 Tex. 533.

When the order of the county court, imposing the tax within its authority, states the amount of the tax, and the property upon which it is levied, such order is sufficient. *Labadie v. Dean*, 47 Tex. 90.

No county tax shall be levied except at a regular term of the court and when all the members of the court are present. Art. 1540, R. S. 1895. See also *Free v. Scarborough*, 70 Tex. 672, 8 S. W. 490.

34. Poll Tax to Be Levied and Collected Annually.—There shall be levied and collected from every male persons between the ages

of twenty-one and sixty years, resident within this State, on the first day of January of each year (Indians not taxed, and persons insane, blind, deaf and dumb or those who have lost one hand or foot, excepted) an annual poll tax of one dollar and fifty cents, one dollar for the benefit of free schools, and fifty cents for general revenue purposes; provided, that no county shall levy more than twenty-five cents poll tax for county purposes. [R. S. Art. 7354.]

By virtue of Section 3, Article 7 of the Constitution, a poll tax is levied on every male inhabitant between the ages of 21 and 60 years, and the exception of the persons and classes of persons named in this article could be held to be invalid and unavailing so that the law and tax could stand and the attempted exceptions fail. *Solon v. State*, 54 Cr. R. 261, 114 S. W. 359.

The above article not being violative of the Constitution, Art. 8, Par. 1, requiring taxation to be equal and uniform, the classification being uniform and resting on a substantial basis and reason (*Spec. Laws 1897*, p. 155, Chap. 110, Par. 15, amended by *Spec. Laws 1905*, p. 263, Chap. 30, Par. 15) providing that any person in the county subject to payment of a poll tax who shall fail to pay, it before a certain time shall be subject to a road duty for a period of three days during the year, etc., is not violative of the section of the Constitution. *Bluitt v. State*, 56 Cr. R. 525, 121 S. W. 168.

The law shall exempt those from payment of a poll tax who have lost a hand or foot, but does not exempt one who lost part of his fingers or whose foot is useless. *Bigham v. Clubb*, 42 C. A. 312, 95 S. W. 675.

Section 15 of Article 8, of the Constitution and laws, enacted in pursuance thereof, makes all property, both real and personal, subject to seizure and sale for the payment of all taxes and penalties due by the delinquent taxpayers; and the tax collector may seize and sell any personal property of the delinquent for the taxes due upon real property as well as personal property before resorting to a sale of the realty. *Wynne v. Simmons Hdw. Co.*, 67 Tex. 46, 1 S. W. 571.

Under Article 8, Section 1, of the Constitution, the Legislature has the power to impose a poll tax. *Perry v. Rockdale*, 62 Tex. 451.

Relative to the liability of exempt property to seizure and sale for delinquent poll tax, see *Ring v. Williams*, 13 C. A. 609, 35 S. W. 733.

Article 927, R. S. 1911 (*Acts of 1875*, p. 113, Sec. 82), gives the power to city council to levy and collect an annual poll tax not exceeding one dollar, from every male inhabitant of said city over the age of 21 years, who is a resident thereof at the time of such annual assessment (idiots and lunatics excepted). See Chap. 6, Arts. 923 to 937, inclusive, for the right of cities to tax.

All officers and enlisted men of the Texas National Guard who comply with all their military duties shall be exempt from the payment of poll taxes save the poll tax prescribed by the Constitution for the support of public schools. Section 54, Chapter 131, Acts of the Twenty-eighth Legislature. In order to entitle any company of the Texas National Guard to the exemption specified in the first subdivision of Section 54, the commanding officer of such company shall annually, between the first and twentieth days of January, file with the assessor of taxes of his county a list of all members of his company who have faithfully discharged all their military

duties for the year preceding, and who shall have been present at the last three preceding regular meetings of the company for parade or drill, or have been excused for non-attendance thereon by reason of illness; such list shall be verified by the affidavit of such commanding officer. Section 55, Chapter 131, Acts of the Twenty-eighth Legislature.

Section 55, Chapter 131, Acts of the Twenty-eighth Legislature, must be strictly complied with before the exemption can be allowed. The list must be made up, sworn to and filed with the tax assessor before January 20th in the year for which the exemption is claimed. Ruling of Comptroller.

Each general, field and staff officer and non-commissioned staff officer may file his affidavits with the county officers named in Sections 55, 56 and 57 respectively (Chapter 131, Acts of the Twenty-eighth Legislature), to the effect that he is a member of the Texas National Guard in good standing, and that he has faithfully discharged all his military duties for the year preceding, when he shall be entitled to the exemptions named in Section 54. Section 58, Acts of the Twenty-eighth Legislature.

An ex-convict is not exempt from the payment of poll taxes whether his citizenship has been restored or not. Opinion of Attorney General.

Austin, Texas, May 5, 1909. Hon. R. V. Davidson, Attorney General's Department, City. Dear Sir: Chapter 13 of the General Laws, passed by the First Called Session of the Thirtieth Legislature, creates a tax board, whose duty it is to ascertain, by calculation, the ad valorem rate of taxes for State purposes each year, and prescribes the duties of such board relating thereto. The recent collection of a fine of \$1,800,000 from the Waters Pierce Oil Company, due to the diligent prosecution of that company by your department, places at the disposal of the State this immense sum of money. Will you kindly inform me whether or not, under the provisions of Chapter 13 of the General Laws, above referred to, the State Automatic Tax Board, in arriving at the rate of ad valorem taxation for State purposes for the coming year, has any authority to in any way consider any monies now in the hands of the State Treasurer by virtue of the payment of such Waters Pierce Oil Company's fine; and whether or not the collection or non-collection of such fine can, in fact, under the law, effect the ad valorem rate of taxation which may be legally levied by the State Tax Board for the next or any succeeding fiscal year? Very respectfully yours. Worth S. Ray.

Austin, Texas, May 5, 1909. Hon. Worth S. Ray, House of Representatives, Capitol. Dear Sir: Replying to your written request that I should advise you as to the powers of the board created by the Act of the Thirtieth Legislature, approved May 16, 1907, and on page 464 of the General Laws, in fixing the rate of taxation for State purposes to take into consideration the money recently placed in the Treasury by the Attorney General, collected in the suit of the State of Texas against the Waters Pierce Oil Company, I beg leave to advise you: First. That money was collected upon a judgment against said company for violation of the anti-trust laws of Texas and is known in law as a penalty or a fine for violation of the anti-trust laws and is no part of the taxes due or paid to the State government, but collected by the government and received by it as a penalty or fine under said anti-trust laws. Second. That the said board is confined in making its estimates and arriving at the rate of taxation, to the taxes, ad valorem, and other taxes of the State, and the statute in no wise authorizes said board to consider funds from other sources, or the said fine or penalty. Yours very respectfully, R. V. Davidson, Attorney General.

CHAPTER III.

OCCUPATIONS SUBJECT TO BE TAXED.

(From Chapter 1, Title 126, R. S.)

SEC.		SEC.	
Occupation Taxes to Be Levied and Collected	35	From Waterworks Companies.....	62
From Itinerant Merchants.....	36	From Certain Money Lenders.....	63
From Traveling Vendors of Patent or Other Medicines.....	37	From Credit Associations or Reporting Agencies	64
Tax on Auctioneers.....	38	From Owners of Skating Rinks....	65
From Ship Brokers or Ship Agents	39	From Managers of Ball Parks.....	66
From Persons Who Sell on Commission	40	From Wholesale Dealers in Ice....	67
From Itinerant Physicians, Oculists, etc.	41	From Owners or Managers of Race Tracks	68
From Persons Keeping Shooting Gallery	42	From Every Street Car Company..	69
From Every Billiard or Pool Table Used for Profit—Defining Same..	43	From Owners of Phonographic Exhibitions Charging Fee—Exemptions	70
From Nine and Ten Pin Alleys Used for Profit—Definition.....	44	From Owners of Motion Picture Machines	71
From Flying Jenny or Merry-Go-Rounds	45	From Stereoscopic Shows.....	72
From Every Foot or Other Peddler	46	From Owners or Managers of Medicine Shows—Exemptions....	73
From Peddlers of Clocks, Farm Implements, Stoves, etc.....	47	From Brokers or Commission Merchants—Intent of Art.....	74
From Theaters and Dramatic Representations—Exemptions	48	From Dealers in Cigarettes — What Is Cigarette	75
From Every Circus — Defining Same	49	From Dealers in Cannon Crackers or Toy Pistols.....	76
From Menageries or Side Shows....	50	Defining "Loan Brokers".....	77
From Acrobatic Exhibitions.....	51	Loan Broker Shall Give Bond.....	78
From Slight-of-Hand Exhibitions..	52	Bond to Be Filed and Recorded..	79
From Waxworks, etc., Charging Fee—Exemptions	53	Bond Required for Each Place of Business	80
From Concerts Where Fee Charged—Exemptions	54	Shall Keep Record of All Loans Made	81
From Insurance Adjusters, Agents	55	Loan Records to Be Opened for Inspection	82
From Lightning Rod Agents or Dealers	56	Loan Brokers Shall File Power of Attorney to County Judge...	83
From Cotton Brokers, Factors and Commission Merchants.....	57	Unpaid Judgment on Bond—Unlawful to Continue Business....	84
From Pawnbrokers	58	Judgment to Be Collected Out of Bond	85
From Sewing Machine Agents and Dealers	59	Failure to Comply With Law—Punishment	86
From Gas Manufacturers.....	60	Mortgages, How Executed	87
From Electric Light Companies....	61	Annual Tax on Loan Brokers.....	88
		Compromises for Usury Are Void	88a

35. Occupation Taxes to Be Levied and Collected.—There shall be levied on and collected from every person, firm, company or association of persons pursuing any of the occupations named in

the following numbered subdivisions of this article, an annual occupation tax, which shall be paid annually in advance, except where herein otherwise provided, on every such occupation or separate establishment, as follows: [R. S. Art. 7355, Introductory of Subject.]

Taxes levied on trades and occupations are not prohibited by the Constitution. *Blessing v. Galveston*, 42 Tex. 641; *State v. Stephens*, 4 Tex. 137-140.

The Texas Constitution empowers the Legislature to impose a tax upon all persons following any occupation, trade or profession other than agricultural or mechanical pursuits; and by virtue of this power it is competent for the Legislature to make it a penal offense for any person subject to such tax to pursue his occupation without first paying the tax imposed by the Legislature. *Napier v. Hodges*, 31 Tex. 287.

Having the constitutional right to impose a tax of occupation the mode in which it should be exercised by the Legislature is a matter for that body not to be questioned by the courts. *State v. Stephens*, 4 Tex. 137; *Napier v. Hodges*, 31 Tex. 287.

And such taxes are in conflict with the Constitution of the United States. *County of Galveston v. Gorham*, 49 Tex. 279.

It appears from the wording of this article that in order to subject the concern to an occupation tax it must either be a corporation, firm or association and the tax would not be levied upon an agent who made loans for an individual. However, it would be the duty of the tax collector to ascertain the exact facts in each case, that is, to find out from the examination of the instrument of record or from any other source of information available whether or not the money loaned was actually money belonging to some individual or belonging to a firm or association of persons or a corporation. *Ruling of Attorney General*, p. 612, 1912-14.

Occupation tax contemplated by Article 7355, Revised Statutes 1911, levied by the State, must be paid annually in advance and cannot be paid for any fractional part of the year, except in those particular instances expressly provided for by the terms of the statute. *Ruling of Attorney General*, p. 627, 1914-16.

36. From Itinerant Merchants.—From every merchant who may remove from place to place and offer for sale "bankrupt stocks" of goods, or advertising "fire sales," or "water and fire damaged stocks for sale," for a limited period of time, there shall be collected one hundred dollars per month for the first month, or less than a month, for each and every place where such business is located; and for each additional month that such sales are continued, at any given place, said merchant shall pay an additional sum of twenty dollars; provided, that where they remain for six months in one place, in addition to the one hundred dollars charged for the first month, they shall pay an additional sum of ten dollars per month; and provided, further, that, if they remain in one place for a period of twelve months, they shall be required to pay, in ad-

dition to the one hundred dollars for the first month, the sum fixed in the preceding paragraph, according to class and amount of goods sold in one year. [R. S. 7355, Subdiv. 1.]

37. From Traveling Vendors of Patent or Other Medicines.—From every traveling person selling patent or other medicines, fifty (\$50.00) dollars, and no traveling person shall so sell until said tax is so paid, provided this tax shall not apply to commercial travelers, drummers, or salesmen making sales, or soliciting trade for merchants engaged in the sale of drugs or medicines by wholesale. [R. S. Art. 7355, Subd. 2, as amended 1917, p. 335.]

A salesman who makes sales for a wholesale drug house is not subject to the payment of the tax required by this subdivision. *Needham v. State*, 51 Cr. R. 248, 103 S. W. 857.

An affidavit and information which fails to negative one of the exceptions is fatally defective. *Huffman v. State*, 55 Cr. R. 144, 115 S. W. 578.

After the expiration of his license as a traveling vendor of medicine a person who continues to sell medicine from his home, his store and one other place and who advertised his medicine while traveling in a wagon to sell other articles but who sold no medicine from the wagon, is not required to take out new license. *Peoples v. State*, 152 S. W. 168.

As to powers of cities and towns, see Art. 871, R. S. 1911, as follows: "To license tax, and regulate, or suppress and prevent hawkers, peddlers, pawnbrokers, and keepers of theatrical or other exhibitions, shows and amusements."

An ordinance which prohibits the peddling of any merchandise in a city's public square or in any of its public streets was held not class legislation. *Ex parte Hogg* (Cr. App.), 156 S. W. 931.

An ordinance prohibiting the peddling of any merchandise in a public square or in any city street, not prohibiting anyone from following the business of peddling, was not invalid as an invasion of the personal right to follow a business or vocation. *Id.*

The Legislature may confer on cities the power to regulate peddling within their jurisdictions. *Ex parte Henson*, 49 Cr. R. 177, 90 S. W. 874.

Power of State to license peddlers held not to exclude right of cities to regulate them. *Id.*

Article 866 permits incorporated cities to inspect meat and produce. Article 871 authorizes them to license, tax, regulate, and suppress hawkers and peddlers. Article 838 permits the city to make all regulations necessary or expedient for the promotion of health or the suppression of disease. Held, when construed with this article, that a city had power to pass an ordinance requiring a license for peddlers of meat, which was not produced by the vendor, to provide for licensing and numbering such peddlers, and require them to keep the articles sold and the wagons in a sanitary condition, as well as to provide for the enforcement of such regulations. *Ex parte Wade* (Cr. App.), 146 S. W. 179.

Article 871 empowers a town to pass an ordinance prohibiting the use of certain streets and the public square for the purpose of peddling. *Ex parte Henson*, 49 Cr. R. 177, 90 S. W. 874.

Under Article 817, giving city councils the power to pass ordinances and

police regulations for good government, trade, etc., Article 854, giving them exclusive control over streets, highways, and public grounds of the city, and Article 866, authorizing it to regulate and to inspect market places, a city was authorized to prohibit peddling of any kind of merchandise on its public square or within its limits. *Ex parte Hogg* (Cr. App.), 156 S. W. 931.

38. Tax on Auctioneers.—From every auctioneer, an annual tax of ten dollars. [R. S. Art. 7355, Subd. 3.]

39. From Ship Brokers or Ship Agents.—From every person, firm or association of persons following the occupation of ship brokers or ship agents, an annual tax of ten dollars. [R. S. Art. 7355, Subd. 4.]

40. From Persons Who Sell on Commission.—From every person, firm or association of persons selling on commission, ten dollars. [R. S. Art. 7355, Subd. 5.]

41. From Itinerant Physicians, Oculists, Etc.—From every itinerant physician, surgeon, oculist or medical or other specialist of any kind, traveling from place to place in the practice of his profession, except dentists practicing from place to place in the county of their residence, an annual tax of fifty dollars. [R. S. Art. 7355, Subd. 6.]

42. From Persons Keeping Shooting Gallery.—From every person or firm keeping a shooting gallery at which a fee is paid or demanded, an annual tax of thirty dollars in each county. [R. S. Art. 7355, Subd. 7.]

43. From Every Billiard or Pool Table Used for Profit—Defining Same.—From every billiard or pool table, or any thing of the kind used for profit, twenty dollars; and any such table used in connection with any drinking saloon or other place of business where intoxicating liquors, cigars or other things of value are sold or given away, or upon which any money or other thing of value is paid, shall be regarded as used for profit. [R. S. Art. 7355, Subd. 8.]

Clubs operating pool and billiard tables in their club rooms are liable for the occupation tax levied by Article 7355 (Revised Statutes) and Section 8 thereof. *Ruling of Attorney General*, p. 612, 1912-14.

State has power to levy occupation tax on pool table run in connection with a saloon, regardless of any profit to owner thereof. *Write v. State*, 41 Cr. R. 200, 53 S. W. 640.

44. From Nine and Ten Pin Alleys Used for Profit—Definition.—From every nine and ten pin or other alley used or operated for profits by whatever name called, constructed or operated upon the principle of a bowling alley upon which pins, pegs, balls, rings, hoops or other devices are used, without regard to the number of

pegs, pins, hoops, rings, or balls used and without regard to the number of tracks or alleys in the same building or place, or whether the balls or other devices are rolled or used by hand or otherwise, one hundred dollars. Any alley used in connection with any drug store, or place where intoxicating liquors or tobacco in any form are sold or given away, or upon which money or other things of value are paid or charged for the privilege of playing shall be regarded as used and operated for profit. [R. S. Art. 7355, Subd. 9, as amended by Acts 1917, p. 385.]

45. From Flying Jenny or Merry-Go-Round.—From all persons keeping or using for profit any hobby horse, flying-jenny, or device of that character, with or without name, fifteen dollars for each county wherein the same are kept or used. [R. S. Art. 7355, Subd. 10.]

46. From Every Foot or Other Peddler.—From every foot peddler, five dollars in each county in which he peddles; from every peddler with one horse or one pair of oxen, the sum of seven dollars and fifty cents in the county in which he peddles; from every peddler with two horses or two pair oxen, ten dollars in each county in which said occupation is pursued; from every peddler with sail or other boat in streams along coasts or bays of this State, ten dollars in each county in which said occupation is pursued; provided, that nothing herein contained shall be so construed as to include traveling vendors of literature or traveling vendors of poultry, vegetables, fruits or other country produce exclusively, and fruit trees exclusively. [R. S. Art. 7355, Subd. 11.]

47. From Peddlers of Clocks, Farm Implements, Stoves, Etc.—From every person or firm who peddles out clocks, agricultural implements, cooking stoves or ranges, wagons, buggies, carriages, surreys and other similar vehicles, washing machines and churns, an annual tax of two hundred and fifty dollars, to be paid in each county in which said occupation is pursued; provided, that a merchant shall not be required to pay this special tax for selling the articles named in this chapter when sold in his place of business. [R. S. Art. 7355, Subd. 12.]

Imposition of a peddler's license by Acts Sp. Sess. Twenty-fifth Leg., p. 54, amending Rev. St. 1895, Art. 5049, Subd. 40, superseded by this subdivision, held unconstitutional, under Const. Art. 8,** i.2. Ex parte Overstreet, 39 Cr. R. 474, 46 S. W. 825.

A person acting as manufacturer's agent, taking orders for stoves to be shipped from factory from another State in three separate parcels, and to be delivered and set up by employee of the manufacturer, is not engaged in peddling stoves within the statute. *Harkins v. State* (Cr. App.), 75 S. W. 27.

An information which fails to allege that the stoves were cooking stoves or ranges is defective. *Id.*

48. From Theaters and Dramatic Representation—Exceptions.—

From every theater or dramatic representation for which pay for admission is demanded or received in towns or cities of fifteen hundred inhabitants or less, one dollar; in towns and cities of fifteen hundred and not over three thousand, two dollars; in towns and cities of over three thousand and not less than five thousand, three dollars; in towns and cities over five thousand and not over ten thousand, four dollars, and in towns and cities of over ten thousand inhabitants, five dollars per day for every day they may perform; provided, that theatrical or dramatic representations given by performers for instruction only, or entirely for charitable purposes, shall not be herein included; provided, however, that this tax shall not be collected where the performances are exhibited in regularly recognized opera houses or theaters; but in lieu of said tax the managers of said opera houses or theaters shall pay an annual occupation tax of twenty-five dollars. [R. S. Art. 7355, Subd. 13.]

49. From Every Circus—Defining Same.—

From every circus wherein equestrian or acrobatic feats and performances are exhibited, for which pay for admission is demanded or received, for each performance or exhibition where an admission fee of one dollar is charged, two hundred and fifty dollars; for each performance or exhibition where admission fee of seventy-five cents is charged, two hundred dollars; for each performance where fifty cents or less is charged, one hundred dollars; provided, that the amount of fee charged for reserved seats shall be considered as a part of such admission fee; provided, that where there is a combination of circus and menagerie, or circus and other exhibitions, the highest tax fixed by this law for any division or department of the combination shall be collected; provided, further, that every show or exhibition which advertises itself as a circus and menagerie, or a combination of circus and menagerie, shall be held and construed to be a circus or a menagerie, or a circus and menagerie, whether it be such or not. [R. S. Art. 7355, Subd. 14.]

See *Ex parte Lingenfelter*, 142 S. W. 555.

The word "circus" is to be understood in its common and ordinary acceptation and embraces the character of exhibition commonly known as a circus and does not mean such an exhibition as the Wild West Show, the main features of which were intended to portray scenes, incidents and characters peculiar to the west in the not very distant past. Therefore the defendant Cody was not required to pay a license tax under this sub-

division, but was only required to pay the tax required by Subdivisions 15, 16, of this article. *State v. Cody* (Civ. App.), 120 S. W. 267.

50. From Menageries or Side Shows.—From every menagerie, wax-works, side show or exhibition, whether connected with a circus or not, where a separate fee for admission is demanded or received, ten dollars for every performance or exhibition in which fees for admission are received. [R. S. Art. 7355, Subd. 15.]

See *Ex parte Lingenfelter*, 64 Cr. R. 30, 142 S. W. 555.

Buffalo Bill's Wild West Show is not a "circus" within the meaning of Art. 7355, Subd. 14, but Subdivisions 15, 16, fix the license tax for exhibitions given by above-named show. *State v. Cody* (Civ. App.), 120 S. W. 267.

51. From Acrobatic Exhibitions.—From every exhibition where acrobatic feats are performed and an admission fee charged for profit, not connected with the circus or theater, ten dollars for each performance. [R. S. Art. 7355, Subd. 16.]

See *Ex parte Lingenfelter*, 64 Cr. R. 30, 142 S. W. 555.

52. From Sleight of Hand Exhibitions.—From every sleight of hand performance or exhibition of legerdemain, not connected with a theater or circus, twenty-five dollars. [R. S. Art. 7355, Subd. 17.]

53. From Wax-Works, Etc., Charging Fee—Exceptions.—From every menagerie, wax-works or exhibition of any kind where a separate fee for admission is demanded or received, ten dollars for every day on which fees for such admission are received; provided, that exhibitions by associations organized for promotion of art, science, charity or benevolence, shall be exempt from taxation; and provided, further, that persons who form a museum composed entirely of the products of Texas shall have the right to exhibit the same for a fee without paying any occupation tax. [R. S. Art. 7355, Subd. 18.]

54. From Concerts Where Fee Charged—Exceptions.—From every concert where a fee for admission is demanded or received, two dollars; provided, that entertainments when given by the citizens for charitable purposes, or for the support or aid of literary or cemetery associations are exempt. [R. S. Art. 7355, Subd. 19.]

55. From Insurance Adjusters, Agents, Etc.—From each and every person acting as general adjuster of losses, or agents of fire and marine insurance companies, who may transact any business as such in this State, an annual occupation tax of fifty dollars. By "general agent," as used in this law, is meant any person or firm, representative of any insurance company in this State, or who may

exercise a general supervision over the business of such insurance company in this State, or over the local agency thereof in this State, or any subdivision thereof. [R. S. Art. 7355, Subd. 20.]

56. From Lightning Rod Agents or Dealers.—From every person, firm or association of persons, dealing in lightning rods, an annual tax of thirty-six dollars to the State and eighteen dollars as county tax to the county in which such business is carried on; and upon every person canvassing for the sale of lightning rods, an annual tax of one hundred dollars to the State and fifty dollars as county tax, in each county in which such canvassing is done. [R. S. Art. 7355, Subd. 21.]

In this subdivision the word "dealer" is used in the sense of one who buys and sells at his place of business, and one who pays the dealer's tax is not authorized to make sales by canvassing, so that the act is not in violation of the Constitution, Art. 8, Secs. 1, 2, providing that taxation shall be equal and uniform upon the same class of subjects. *Camp v. State*, 61 Cr. R. 229, 135 S. W. 146.

57. From Cotton Brokers, Factors and Commission Merchants.—From every person, firm or association of persons following the occupation of cotton broker, cotton factor, or commission merchant, in a city of ten thousand inhabitants or over, thirty-five dollars; and in all cities and towns of less than ten thousand inhabitants, an annual tax of eighteen dollars; provided, that a merchant who pays an occupation tax under this law shall not be considered as a cotton broker. A "commission merchant," in the meaning of this article, is every person, firm or association of persons, receiving country produce, horses, cattle, sheep, hogs, grain, hay, lumber, shingles, wood, coal, goods, wares and merchandise, or anything else for sale, to be accounted for to the owner when sold, and charging a commission therefor. [R. S. Art. 7355, Subd. 22.]

58. From Pawnbrokers.—From every pawnbroker, an annual tax of one hundred and fifty dollars. [R. S. Art. 7355, Sub. 23.]

59. From Sewing Machine Agents and Dealers.—From every person, firm, agency, or association of persons dealing in sewing machines, an annual tax of fifteen dollars to the State and seven dollars as a county tax in every county where such business may be carried on; provided, that a merchant who pays an occupation tax, as required by this article, shall not be required to pay this special tax to sell sewing machines when sold in his place of business. [R. S. Art. 7355, Subd. 24.]

Acts Twenty-fifth Leg., First Called Session, Chap. 18, amending Article 5049, Subd. 39, Rev. St. 1895, and providing that from every person, firm,

agency or association of persons dealing in sewing machines an annual tax of \$15 to the State and \$7 to the county in every county where such business is carried on shall be paid provided that a merchant who pays an occupation tax, as required by the act, shall not be required to pay the special tax to sell sewing machines when sold in his place of business, and also levying a tax of \$3 upon merchants for the State, with a tax of \$1.50 for the county, was in violation of the Constitution, Art. 8, Secs. 1, 2, for inequality and non-uniformity. *Ex parte Bockhorn*, 62 Cr. R. 651, 138 S. W. 706.

Since an unconstitutional act is void from its inception, neither conferring rights, imposing duties, nor affording protection, Acts Twenty-fifth Leg. First Called Session, Chap. 18, Art. 5049, Subd. 39, imposing a license tax on sellers of sewing machines, unconstitutional in its inception as discriminating and non-uniform, was not rendered valid by the subsequent repeal of the part of the act rendering it unconstitutional by Acts Thirtieth Leg., Chap. 35. *Id.*

60. From Gas Manufacturers.—From each gas company, manufacturing gas in towns and cities of ten thousand or more inhabitants, thirty-five dollars; in a city or town of less than ten thousand inhabitants, twenty dollars. [R. S. Art. 7355, Subd. 25.]

61. From Electric Light Companies.—From each electric light company operating an electric light plant in a town or city of ten thousand inhabitants or more, thirty-five dollars; in a city or town of less than ten thousand inhabitants, twenty dollars. [R. S. Art. 7355, Subd. 26.]

62. From Water Works Companies.—From each water works company operating a water works plant in a town or city of ten thousand inhabitants or more, thirty-five dollars; in a city or town of less than ten thousand inhabitants, twenty dollars. [R. S. Art. 7355, Subd. 27.]

63. From Certain Money Lenders.—From every person, firm, or association of persons loaning money as agent or agents for any corporation, firm or association, either in this State or out of it, an annual occupation tax of one hundred and fifty dollars for the State, for the principal office, and a county tax of fifteen dollars from each agent for each county in which he may do business, and no additional occupation tax shall be levied by any county, city or town in this State. [R. S. Art. 7355, Subd. 28.]

64. From Credit Associations or Reporting Agencies.—From each person, party, partnership or corporation engaged in the business of inquiring into and reporting upon the credit or standing of persons engaged in business in this State, or acting as agent or business manager in this State for any such person, party, partnership, joint stock association, or corporation, three hundred dollars; and provided, further, that no county, city or town shall levy or collect any occupation

tax upon or from any such person, party, partnership, joint stock association, or corporation. The payment of this tax, evidenced by the receipt of the comptroller of public accounts, shall exempt the company or party paying the same from the payment of this tax in any other county; and payment of such tax shall not be required of any sub-agent or correspondent of the party or company carrying on such business in this State. [R. S. Art. 7355, Subd. 29.]

65. From Owners of Skating Rinks.—From each and every owner or keeper of any skating rink used for profit, twenty-five dollars. [R. S. Art. 7355, Subd. 30.]

66. From Managers of Ball Parks.—From every manager of a baseball park in a city or town containing five thousand or more inhabitants, where an admission fee is charged, twenty-five dollars. [R. S. Art. 7355, Subd. 31.]

67. From Wholesale Dealers in Ice.—From each person or corporation, who are wholesale dealers, selling imported or home-made ice to the trade to be sold again, in cities and towns of twenty thousand inhabitants, or more, fifty dollars; in cities and towns of less than twenty thousand inhabitants or more than ten thousand inhabitants, thirty dollars; in cities and towns of less than ten thousand inhabitants and more than five thousand inhabitants, twenty dollars; in cities and towns of less than five thousand inhabitants, ten dollars. [R. S. Art. 7355, Subd. 32.]

One who manufactures and sells his product is not a dealer within the meaning of this law and is not taxable as such a dealer. *Egan v. State* (Cr. App.), 68 S. W. 273.

68. From Owners or Managers of Race Tracks.—From every owner or manager of every race track, one mile or more in length, used for profit, one hundred dollars; from each owner or manager of every race track, one-half mile or less in length, fifty dollars per annum; provided, this shall not apply to race tracks owned by private individuals and used only for training purposes, or in connection with agricultural fairs and expositions. [R. S. Art. 7355, Subd. 33.]

69. From every street Car Company.—From every street car company in this State, two dollars per mile on each mile of track owned by said company or corporation. [R. S. Art. 7355, Subd. 34.]

This subdivision is not repealed by Art. 7378, levying a tax on gross earnings. *Dallas Consol. Electric St. Ry. Co. v. State*, 102 Tex. 570, 120 S. W. 997 (affirming: *Dallas Consol. Electric St. Ry. Co. v. State* (Civ. App.), 118 S. W. 880).

70. From Owners of Phonographic Exhibitions Charging Fee—Exceptions.—From each owner or manager of every phonographic, electric battery, graphophone or other like machines or instruments, where a fee is charged, an annual tax of twenty-five dollars; provided, that when an electric battery is used by a regularly authorized physician on a patient, no tax shall be charged. [R. S. Art. 7355, Subd. 35.]

71. From Owners of Motion Picture Machines.—From each owner or keeper of every kinetoscope, cinetograph or similar machine or instrument used for profit, which shows the life-like motions of persons or animals, an annual occupation tax of twenty-five dollars. [R. S. Art. 7355, Subd. 36.]

72. From Stereoscopic Shows.—From each owner, manager or keeper of every panorama or view show, used for profit, exhibiting in a wagon, room, tent or elsewhere, an annual occupation tax of ten dollars and a county occupation tax of two dollars per annum. A panorama or view show, in the meaning of this Act, is a show exhibiting pictures, statuary or other works of art which are to be viewed through stereoscopic or magnifying lenses. [R. S. Art. 7355, Subd. 37.]

73. From Owners or Managers of Medicine Shows—Exceptions.—From each owner, manager or keeper of every show or company of persons giving exhibitions of music, songs, recitations, sleight of hand, gymnastic, dancing or other kinds of performances in a tent, house or elsewhere, which said exhibitions are used for profit by sale of medicines, electric belts or other articles of value, whether charge is made only for seats or not, an annual occupation tax of fifty dollars and a county occupation tax of two dollars and fifty cents for every such performance or exhibition; provided, this tax shall not be assessed when these performances are given inside the grounds of any State or county fair during the time that said State or county fair is giving its annual exhibition. [R. S. Art. 7355, Subd. 38.]

74. From Brokers or Commission Merchants—Intent of Act.—From every person, firm or association of persons selling on commission, if in a city of more than ten thousand inhabitants, fifty dollars; if in a city or town of less than ten thousand inhabitants, twenty-five dollars. This article is intended to cover every person, firm or association of persons selling on samples only, and who do not carry any stock of merchandise or anything else on hand; provided, that this tax shall not apply to commercial travelers or salesmen making sales or soliciting trade from merchants. [R. S. Art. 7355, Subd. 39.]

The term "peddler" defined. Ruling of Attorney General, p. 603, 1912-14.

A license tax may be constitutionally imposed upon peddlers because they are not engaged in interstate commerce. Ruling of Attorney General, p. 603, 1912-14.

Section 39 of Article 7355, Revised Statutes 1911, is invalid in so far as it attempts to impose an occupation tax upon the soliciting of orders for goods for future delivery where the execution of the contract of sale requires the transportation of the goods sold from one State into another, because such a tax is an imposition upon interstate commerce and prohibited by the Federal Constitution. Ruling of Attorney General, p. 603, 1912-14.

The fact that goods ordered are shipped in bulk to and delivered by the salesman of the respective purchasers is immaterial if the transaction has in other respects the character of interstate commerce. Ruling of Attorney General, p. 603, 1912-14.

However, if for any reason goods ordered are not delivered and are left on hand, a resale thereof would not be protected as interstate commerce, and such salesman would be amenable to the license tax laws of this State. Ruling of Attorney General, p. 603, 1912-14.

75. From Dealers in Cigarettes—What Is Cigarette.—From all dealers in cigarettes in this State, the sum of ten dollars per annum, a cigarette being within the meaning of this Act the same as defined by the laws of the United States Government; provided, that this tax shall be in addition to the occupation tax levied on merchants, and any other tax levied under the law; and provided, further, that each dealer shall be required to procure an annual license from the county clerk of the county where he proposes to sell cigarettes, which shall be granted for no shorter or longer period than one year; and provided, further, that the license shall prescribe the house and locality where the dealer proposes to sell cigarettes. [R. S. Art. 7355, Subd. 40.]

"Occupation," as used in a statute imposing a license, held to mean a calling, trade, or vocation engaged in for profit. *Shed v. State* (Cr. App.), 155 S. W. 524.

A tax levied on a corporation for the exercise of the privilege of carrying on its business is an occupation tax, under Const. Art. 8, Sec. 1. *State v. G. H. & S. A. Ry. Co.*, 100 Tex. 153, 97 S. W. 71.

Unless mainly imposed for revenue, a license fee is not a tax, but the price paid for the privilege of exercising a franchise. *Ex parte Denny*, 59 Cr. R. 579, 129 S. W. 1115.

Sums imposed in the regulation of the business of running vehicles for hire are license fees and not occupation taxes. *Id.*

Where a statute imposes an occupation tax it will generally be assumed that the tax is to be the only one on that occupation. *Dallas Consol. Electric St. Ry. Co. v. State*, 102 Tex. 570, 120 S. W. 997.

The Legislature in the exercise of its power held entitled to impose especial burdens on occupations and individuals, provided the classification

is reasonable and all within the class are treated alike, notwithstanding Const. Amend. U. S. 14. *State v. T. & P. Ry. Co.* (Civ. App.), 143 S. W. 223.

A statute imposing an unreasonable tax on a legitimate business under the guise of an occupation tax is unconstitutional; but this rule does not apply to occupations which are detrimental to the health, morals, or good order of society. *Caswell & Smith v. State* (Civ. App.), 148 S. W. 1159.

The term "firm," as used in this article, is interchangeable with the term "company" or "corporation." *Ex parte Butin*, 28 Cr. R. 304.

The tax is imposed upon the firm itself without restriction as to the number of agents or vehicles it employs in pursuing its occupation. *Ex parte Butin*, 28 T. Cr. 304.

A medical specialist who has two places of business between which he divides his time in attending professional calls, is not traveling from place to place in the practice of his profession within the meaning of this article so as to subject him to paying of taxes at each place. *Hairston v. State*, 37 S. W. 858.

One engaged in what is called a "move wagon," moving furniture for hire, always driving the wagon and loading and unloading it himself, or with such assistance as he may employ, does not let his wagon for hire within the meaning of Subdivision 31. *Orr v. State*, 44 S. W. 1102.

The law imposing an occupation upon lawyers is constitutional. *Languill v. State*, 4 Cr. App. 312; *Hart v. State*, 21 Tex. Cr. App., 318; *Ex parte Williams*, 31 Tex. Cr. App., 262.

The fact that the State has no authority to enforce the law against national banks does not make it void for want of uniformity. *Brooks v. State*, 58 S. W. Rep., 1033.

The tax is not levied on the vocation of a photographer, but on the owner of a photograph gallery. *Mullinnix v. State*, 60 S. W. 768.

An order of the commissioners' court levying an occupation tax on the occupation taxable by statute is sufficient without specifying each and every occupation on which the tax is levied. *Witherspoon v. State*, 44 S. W. 164.

The State has power to levy an occupation tax on a pool table run in connection with a saloon, regardless of any profit whatever to the owner thereof. *Wright v. State*, 53 S. W. 640.

Subdivision 38 unconstitutional because it allows a merchant to become a cotton buyer on payment of a less tax than required of other cotton buyers. *Rainey v. State*, 53 S. W. 882.

The fact that an eleventh-class merchant runs a dray line in connection with his business as merchant does not relieve him from paying a tax as such merchant. *Edwards v. State*, 69 S. W. 144.

One manufacturing ice and selling his product is not a dealer within the meaning of Subdivision 52, imposing a tax on wholesale dealers in ice. *Egan v. State*, 68 S. W. 273.

Under the Act of 1899, providing that every person peddling cooking stoves or ranges shall pay an occupation tax, a person acting as manufacturer's agent, taking orders for stoves to be shipped from the factory in another State, and to be delivered and set up by another employe of the manufacturer, is not engaged in peddling stoves within the statute. *Harkins v. State*, 75 S. W. 26.

One selling ranges by sample, taking orders for future delivery, to be paid for only on such delivery, and who does not deliver the goods sold,

is not a peddler within Chapter 116, Acts of 1899. *Potts v. State*, 74 S. W. 31.

A foreign manufacturer made buggies and shipped them into the State in original packages, some of which contained buggies complete, others containing parts thereof. The buggies were then put together by the manufacturer's agent and peddled by him through the State. When a buyer desired a vehicle not in stock, the agent sent the order to the manufacturer, who shipped to the buyer. Held that the agent was properly convicted for peddling without first obtaining a license therefor. *Saulsbury v. State*, 63 S. W. 568.

A physician residing in one town and maintaining an office in another, in which he practices medicine as a specialist, is not a specialist traveling from place to place within the meaning of Subdivision 13. *Broiles v. State*, 68 S. W. 685.

The tax to be paid by a merchant is based on amount of estimated purchases for ensuing year and not on amount of past year. Opinion of Attorney General.

An undertaker who merely embalms the body and otherwise prepares it for burial is not liable for an occupation tax; but if he keeps a stock of coffins, shrouds and other material on hand which he uses in his business and which he exposes for sale, and holds himself out to the public as a dealer in coffins, shrouds, etc., he would be liable for the tax even though he bought the coffins untrimmed and decorated them himself. Opinion of Attorney General.

Proprietors of hotels who keep cigars and tobacco or either for sale are liable for the merchant's occupation tax. Ruling of Comptroller.

A palmist is liable for the occupation tax imposed on fortune tellers. Ruling of Comptroller.

A fortune teller or palmist is liable for the State tax to be paid once per annum in any county, and also a county occupation tax in each county in which the occupation is pursued. Ruling of Comptroller.

The tax for the State and also for the county imposed on clairvoyants and mesmerists is collectible in each and every county in which such vocation is carried on. Ruling of Comptroller.

The occasional purchase or discounting of a note as an investment would not subject a person to the tax under Subdivision 5, but if he holds himself out to the public, directly or indirectly, as a dealer, whether his transactions are numerous or not, or whether his chief occupation is some other business or not, he would be liable for the tax. Opinion of Attorney General.

"Dealers," as that term is used in Subdivision 5, does not include within its meaning persons who receive a commission only for their services. Opinion of Attorney General.

A real estate dealer is required to pay the county tax in each county in which he does business. The State tax is payable only one time annually and can be paid in any county. Opinion of Attorney General.

Persons traveling and selling patent or other medicines in connection with a concert or other performance must pay the tax imposed by Subdivision 3, and also the tax imposed by Subdivision 60. Opinion of Attorney General.

Each member of a firm of lawyers must pay the full occupation tax under Subdivision 12. Opinion of Attorney General.

Under the clause exempting venders of poultry, vegetables, fruits, etc.,

peddlers of bananas, going from place to place or from town to town in a wagon, are exempt from the payment of an occupation tax. Opinion of Attorney General.

A general insurance agent doing a general insurance business, having no fixed headquarters in this State from which he conducts his business and to which reports are made, is not required to pay either a city or a county occupation tax. If such agent has headquarters in this State, the city and county in which such headquarters are located would have the right to collect the tax. Opinion of Attorney General.

A person employed by a general insurance agent to appoint local agents, adjust losses and audit accounts of local agents, is neither a general nor a local agent within the meaning of Subdivisions 32 and 33 and is not subject to any tax. Ruling of Comptroller.

Operator of a magic lantern or stereopticon is not subject to the payment of an occupation tax. Ruling of Comptroller.

A local insurance agent is liable for the annual State tax to be paid once per annum in any county and also a county occupation tax in each and every county in which he transacts any insurance business; provided, the county has levied a tax on such occupation. Opinion of Attorney General.

A criminal prosecution is the proper proceeding against a person pursuing a taxable occupation without payment of the tax. The county attorney is not entitled to any commissions on the tax collected when he brings suit to collect same. Opinion of Attorney General.

A company owning and operating a waterworks plant and also an electric light plant, is liable for the tax as a waterworks company and also a similar tax as an electric light company. Opinion of Attorney General.

A person who merely loans his own money is not subject to the tax imposed by Subdivision 47. A life insurance agent who makes loans of money belonging to or controlled by the company he represents is liable for the tax. Ruling of Comptroller.

If the wholesale house keeps a warehouse at a different point from its place of business, at which warehouse or storehouse goods are kept, to be distributed and delivered to persons to whom they have been sold at the regular place of business of the wholesale house, no sales being made at such warehouse or storehouse, or other business conducted there except to deliver and distribute from that point goods sold at the wholesale house or regular place of business, in such case the wholesale dealer would not be liable to the occupation tax as a merchant at the place of location of such warehouse or storehouse. Opinion of Attorney General.

If, however, any sales are made at such warehouse or storehouse, or anything done in connection with the sale of the goods other than merely to store the same and deliver and distribute them, when sold at the wholesale house, or main place of the wholesale dealer, in such case such so-called warehouse or distributing point would be a separate establishment within the meaning and intention of Article 5049, Revised Statutes, and liable to payment of occupation tax. Opinion of Attorney General.

Whether the wholesale dealer is liable depends upon the facts, and whether the real nature of his business at the so-called distributing point bring him within the one or other of the cases stated above. Opinion of Attorney General.

It does not at all follow that because no books are kept at such so-called

distributing point that no sales are made there. Opinion of Attorney General.

Electric interurbans are not included in the Act of the Thirtieth Legislature, First Ex. Session, Chap. 18, Sec. 1, imposing an occupation tax on one doing express business by "railroad." *North Texas T. & W. Co. v. State* (Tex. Sup.), 191 S. W. 550.

A city may impose regulation over streets and collect a franchise tax from a telegraph company for the use of a street within its limits, although the same constitutes a part of a post road, and said tax will not be a tax of a privilege granted by the United States under Act of Congress, July 24, 1866. *W. U. Tel. Co. v. City of Houston* (T. C. A.), 192 S. W. 577.

76. From Dealers in Cannon Crackers or Toy Pistols.—There shall be levied upon every person, firm or corporation engaged in the occupation of selling cannon crackers, or toy pistols used for shooting or exploding cartridges, within this State, an annual tax of five hundred dollars, and counties and incorporated cities or towns in which such business shall be located shall have the power to levy a tax of one-half the above amount as now provided by law in addition to the above tax, and such person, firm or corporation so selling such cannon crackers shall be required to pay an additional tax in the above amount and take out an additional license for each separate establishment or place in which such cannon crackers shall be sold. By the term, "cannon cracker," is meant any fire cracker or other combustible package more than two inches in length, and more than one inch in circumference commonly sold and exploded for purposes of amusement. Nothing in this article shall be so construed as to prohibit the sale of or to place a tax on the sale of cartridges, combustible packages or explosives commonly used for fire arms or artillery, mining, excavating earth or stone, scientific purposes or for any public or private work. [R. S. Art. 7356, Acts 1909, p. 174.]

77. Defining "Loan Brokers."—A "loan broker" is a person, firm or corporation who pursues the business of lending money upon interest and taking as security for the payment of such loan and interest an assignment of wages, or an assignment of wages with power of attorney to collect the same or other order for unpaid chattel mortgage or bill of sale upon household or kitchen furniture. [Sec. 1, Chap. 28, Acts 1915.]

78. Loan Broker Shall Give Bond.—No person, firm or corporation shall pursue the business of a loan broker without first having given bond with at least two good and sufficient sureties or the guaranty of some solvent bonding company authorized to do business in this State, in the sum of five thousand (\$5000) dollars, payable to the State of Texas, approved by and filed with the clerk of

the county court of the county in which such person, firm or corporation proposes to pursue said business, conditioned that such person, firm or corporation shall faithfully comply with each and every requirement of the law governing such business, and will pay to any person dealing with such loan broker any judgment that may be obtained against him. [Sec. 2, Chap. 28, Acts 1915.]

79. Bond to Be Filed and Recorded.—The bond required by the preceding article shall be recorded and safely kept in the office of the clerk of the county court of the county in which such loan broker pursues such business, the recording fees thereof to be paid by such loan broker, and a new bond shall be given, filed and recorded in the same manner as the first one, every twelve months during the continuance of such business. [Sec. 3, Chap. 28, Acts 1915.]

80. Bond Required for Each Place of Business.—A bond shall be required and given by each loan broker for each and every separate office or place of business which he may conduct. [Sec. 4, Chap. 28, Acts 1915.]

81. Shall Keep Record of All Loans Made.—Each loan broker shall keep a well bound book in which he shall register all his transactions as a broker at the time same occurs; such registry shall show (1) the articles of property securing the loan, if the same be secured by chattel mortgage or bill of sale on household or kitchen furniture; (2) the assignment of wages, or the assignment of wages with power of attorney to collect the same, or other order for unpaid wages given as security, giving the name of the person receiving the money, and the person by whom such person is employed, or by whom it is expected that he will be employed, and in whose service it is expected that he shall earn the salary or wages; (3) the amount of money received by the borrower; (4) the amount to be received back by the loan broker, and the time in which he is to receive back such payment; (5) the rate of interest or discount agreed upon. [Sec. 5, Chap. 28, Acts 1915.]

82. Loan Records to Be Open for Inspection.—Such books shall be kept open for inspection, and the broker shall give to the party borrowing, a ticket showing the amount of cash actually received, and showing the amount paid back by the borrower to the loan broker on each payment, such tickets to correspond with the entry on the book of the register. [Sec. 6, Chap. 28, Acts 1915.]

83. Loan Broker Shall File Power of Attorney to County Judge.—Each loan broker as defined in Section 1 of this Act engaged in doing or desiring to do business in this State shall file with the county clerk of the county in which he or it is engaged in doing such business or desires to do such business an irrevocable power

of attorney duly executed, constituting and appointing the county judge of the county in which he or it is engaged in doing business, or in which he or it desires to do business, and to his successor in office, his or its duly authorized agent and attorney in fact, for the purpose of accepting service for him or it, or being served with citation in any suit brought against him or it in any court of this State by any person, firm, company or corporation, and consenting that the service of any civil process upon such county judge as his or its attorney for such purpose, in any suit or proceeding, shall be taken and held to be valid, waiving all claim and right to object to such service or to any error by reason of such service and such appointment, agency and power of attorney, shall by its term and recitals provide that it shall continue and remain in force and effect so long as such loan broker continues to do business in this State and so long as it shall have outstanding any claim of any character held by any citizen, firm, company or corporation of this State or by the State of Texas against him or it, and until all claims of every character, so held by any citizen, firm, company or corporation or by the State of Texas, shall have been settled. Said power of attorney shall be signed in person by any individual loan broker and by each member of any firm, partnership or association engaged in business as a loan broker, and if such loan broker is a corporation it shall be signed by the president or vice-president and by the secretary of such corporation, and shall be attested by the seal of such corporation. Each such power of attorney shall be acknowledged before some officer authorized by the laws of this State to take acknowledgments. [Sec. 7, Chap. 28, Acts 1915.]

84. Unpaid Judgment on Bond—Unlawful to Continue Business.—If any judgment upon any bond given by any loan broker shall remain unpaid for sixty days after final judgment and execution thereon, it shall be unlawful for such loan broker to continue to run such business, and the same shall be punished by fine of not less than \$50.00, nor more than \$250.00, and each and every day in which such loan broker conducts such business shall be a new and separate offense. Each and every person employed by and engaged in the conduct of such business shall be guilty of unlawfully conducting the same, if the same be conducted without a bond, or after the forfeiture of such bond as above described. [Sec. 8, Chap. 28, Acts 1915.]

85. Judgments to Be Collected Out of Bond.—Any judgment obtained by any person against a loan broker under these articles or under the laws of the State of Texas shall be collectable out of the bond herein provided for. [Sec. 9, Chap. 28, Acts 1915.]

86. Failure to Comply With Law—Punishment.—If any loan broker, or person doing business as such shall make any loan upon chattel mortgages or bill of sale upon household or kitchen furniture, or shall make any loan taking as security for the payment thereof an assignment of wages or an assignment of wages with power of attorney to collect the same, whether the same be called a loan or purchase without complying with the laws regulating loan brokers in this State, he shall be punished by a fine of not less than \$50.00 nor more than \$250.00 for each. [Sec. 10, Chap. 28, Acts 1915.]

87.—Mortgages, How Executed.—Each assignment, mortgage, power of attorney to collect or other transfer of the salary or wages of a married man, and each bill of sale or chattel mortgage upon the household and kitchen furniture of a married man shall be void unless the same be made and given with the consent of the wife, and such consent shall be evidenced by the wife joining in the assignment, mortgage, power of attorney to collect or other transfer of salary or wages, and the signing of her name thereto and by her separate acknowledgment thereof, taken and certified to by a proper officer, substantially in the mode provided by law for the acknowledgement by the wife of a conveyance of the homestead. [Sec. 11, Chap. 28, Acts 1915.]

88. Annual Tax on Loan Brokers.—Every loan broker shall pay an annual tax of one hundred and fifty dollars to the State of Texas for each and every place of business. [Sec. 12, Chap. 28, Acts 1915.]

88a. Compromises for Usury Are Void.—All compromises for usury or unlawful interest collected and received are contrary to public policy, and shall be void. [Sec. 13, Chap. 28, Acts 1915.]

CHAPTER IV.

METHOD OF COLLECTING OCCUPATION TAXES—POWER OF COMMISSIONERS' COURT AND CERTAIN OFFICERS.

(From Chapter 1, Title 126, R. S.)

	SEC.		SEC.
Power of Commissioners' Court to Levy Taxes for Certain County Purposes	89	tion Tax Receipts to Collectors	94
All Taxes Payable in Currency or Coin of United States—Exemptions	90	Account of Receipts to Be Furnished Commissioners	95
Collector of Taxes to Keep Book for Certain Purposes	91	May Transfer License on Books..	96
Comptroller to Furnish Tax Collector Certain Books, etc.....	92	Purchaser of Unexpired License May Pursue Occupation When, etc.	97
Occupation Taxes to Be Paid Before Business Begins	93	Governor May Appoint State Revenue Agent—Duties of His Office	98
Comptroller to Furnish Occupa-		State Revenue Agent Shall Have Access to Books	99
		Salary of State Revenue Agent....	100

89. Power of Commissioners' Court to Levy Taxes for Certain County Purposes.—The commissioners' courts of the several counties of this State shall have the power to levy, for county revenue purposes, a tax of one-fourth of one per cent, and, for roads and bridges, fifteen cents on the one hundred dollars valuation of all property subject to a State tax by the provisions of this title; and, for the payment of debts incurred prior to September, 1883, and for the erection of public buildings and other permanent improvements, they shall have power to levy a tax not to exceed twenty-five cents on the one hundred dollars valuation in any one year; and, for the improvement of public roads, a tax not to exceed fifteen cents on the one hundred dollars valuation under the restrictions provided in Chapter Seven of Title Ninety-seven, and shall have the power to levy a special tax for the further maintenance of public free schools, and the erection within each school district of school buildings therein in counties not exempt from the district school system; provided, that two-thirds of the qualified property tax-paying voters of the district, voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year twenty cents on the one hundred dollars valuation of the property subject to taxation in such district, and shall have the right to levy one-half of the occupation tax levied by the State upon all occupations not herein otherwise specially exempted; provided, any one

wishing to pursue any of the vocations named in this chapter, upon which a county occupation tax may be levied, may do so by paying the same quarterly; and provided, further, the receipt of the proper officer under seal shall be prima facie evidence of the payment of such taxes as are herein named; and provided, further, the provisions of this law shall not be deemed to affect the provisions of any law specially authorizing any commissioners' court to levy a different rate of tax; and provided, further, no person shall be allowed license for selling intoxicating or spirituous liquors, or for keeping any nine or ten pin alley, or billiard, bagatelle, pigeon-hole, jenny-lind, devil-among-the-tailors table, or anything of the kind used for profit, for a period of less than twelve months; and provided, further, the mayor and board of aldermen of any incorporated town or city shall in no case levy a greater tax on any occupation than that authorized by this chapter to be levied by the county commissioners' court; and be it further provided, that in all cases where any dealer in merchandise, wares or goods of any kind, subject to ad valorem or occupation taxes, or both, under the provisions of this law, who shall after the rendition of said merchandise, wares or goods for taxation, or after becoming liable for any occupation tax, become bankrupt or make assignment of said merchandise, wares or goods, then the collector of taxes shall at once present to the receiver or assignee of said dealer for payment of the amount due for said taxes by said dealer; and in case of failure of said receiver or assignee to at once pay the amount of said taxes, the said collector shall levy upon, seize and sell from the said merchandise, wares or goods, enough to satisfy the amount of said taxes; and said taxes until paid shall constitute a prior lien on said merchandise, goods and wares in default of said taxes. [R. S. Art. 7357, Acts of 1885, p. 105. Acts of 1891, p. 51.]

For order to levy a tax held not sufficient, see *Dawson v. Ward*, 71 Tex. 72, 9 S. W. 106.

An order to levy a specified tax "for courthouse and jail" sufficiently indicates its purpose. *Cresswell Ranch & Cattle Co. v. Roberts County* (Civ. App.), 27 S. W. 737.

An order levying an occupation tax held sufficient, without specifying the different occupations taxed. *Witherspoon v. State*, 39 Cr. R. 65, 44 S. W. 164, 1096.

This article confers authority upon the commissioners' courts of counties to levy taxes and the language, "and shall have the right to levy one-half of the occupation tax levied by the State upon all occupations not herein otherwise specially exempted," applies only to the subjects mentioned in that article which specified a number of occupations that were subject to taxation. It was not intended to confer upon the court the power to levy a tax upon all occupations which might thereafter be made

subject to taxation by the statute. The authority to tax was limited to those named, but not exempted. *State v. Galveston, H. & S. A. Ry. Co.*, 100 Tex. 153, 97 S. W. 78.

There is no law authorizing the levy upon a railroad of any occupation tax for the exercise of its franchise to operate and carry on its business as a carrier. *State v. Galveston, H. & S. A. Ry. Co.*, 100 Tex. 153, 97 S. W. 78.

For the law relating to injunctions, see R. S., Art. 4643.

It is insufficient ground for an injunction restraining the collection of a tax upon an assessment actually made, that it has not been described correctly on the assessment rolls prepared from the assessment actually made. *Prima facie*, the tax is due upon the assessment, and equity will not aid one who is himself in default. *Harrison v. Vines*, 46 Tex. 15.

Injunctions granted to restrain the sale of property levied on to satisfy a tax not legally assessed. *George v. Dean*, 47 Tex. 84; *Bank v. Rogers*, 51 Tex. 606; *Court v. O'Conner*, 65 Tex. 339; *Davis v. Burnett*, 77 Tex. 3, 13 S. W. 613; *Schmidt v. Railway Co. (Civ. App.)*, 24 S. W. 546.

The acts of an assessor listing land in the wrong county and selling the same does not cast a cloud upon the title hereto which would authorize an injunction to restrain the collection of the tax. *Chisholm v. Adams*, 71 Tex. 678, 10 S. W. 336.

Any misdescription of the property of a taxpayer by the assessor or a mere irregularity in his entry of it upon the assessment list or roll, furnishes no sufficient ground for enjoining the collection of a tax for which the plaintiff was justly liable, and with which his property has been legally assessed by the proper officer charged with this duty. *George v. Dean*, 47 Tex. 73.

Where cattle properly assessed for taxation in one county were also assessed in another county, it was not necessary, before applying for an injunction against the latter assessment to seek relief from the board of equalization, or other officers having control in matters of taxation, and unimportant whether the taxes in the former county were paid before or after the levy which was sought to be enjoined. It was sufficient if the right to the taxes has fully accrued to that county, and was effected by the previous assessment made thereon, *Court v. O'Conner*, 65 Tex. 334; *Hardesty v. Fleming*, 57 Tex. 400.

The levy of a tax voted by a school district will not be restrained because the call for the election to authorize such a tax was participated in by the *de facto* trustees. *Boesch v. Byrom*, 37 C. A. 35, 83 S. W. 18.

In the absence of a showing that the school trustees did not act for the best interests of the districts, their acts in changing the location of these school buildings are no ground for restraining levy taxes ordered by the district. *Id.*

An injunction will not be granted to prohibit a tax collector from demanding an occupation tax. *Yellowstone Kit v. Wood*, 18 C. A. 683, 43 S. W. 1068.

A property owner may be required to pay the legal tax before being granted equitable relief against an excessive tax. *Conklin v. City of El Paso (Civ. App.)*, 44 S. W. 879.

A railroad company held not entitled to an injunction restraining the collection of taxes because of an unfair valuation of its property. *Misouri, K. & T. Ry. Co. of Texas v. Hassell*, 57 C. A. 522, 123 S. W. 190.

The collection of illegal taxes will be restrained by injunction. *Davis*

v. Burnett, 77 Tex. 3, 13 S. W. 613; Court v. O'Conner, 65 Tex. 334. See Rosenberg v. Weeks, 67 Tex. 578, 4 S. W. 899; Cook v. Railway Co. 24 S. W. 544, 5 C. A. 644.

A suit against State officials to restrain them from collecting a privilege tax imposed by Acts Twenty-ninth Legislature, p. 358, c. 148, reenacted with modifications in 1907 and embodied in title 126 chapter 2, is a suit against the State and cannot be maintained without its consent. Producers' Oil Co. v. Stephens, 44 C. A. 327, 99 S. W. 157; Texas Co. v. Stephens (Civ. App.), 99 S. W. 160. Contra, see Galveston, H. & S. Ry. Co. v. Davidson (Civ. App.), 93 S. W. 436.

Where a school district has been organized under color of statutory authority, its corporate existence and the rights of the trustees to exercise their functions cannot be inquired into in a collateral proceedings to restrain a threatened levy and collection of taxes upon the property of the plaintiffs. Coffman v. Goree Independent School Dist. (Civ. App.), 141 S. W. 132.

Where national bank stock was assessed in a county at 85 per cent, valuation, while all other property was assessed at a 41 per cent valuation, there was discrimination and the stockholders might enjoin the collection of the excessive tax. Langley v. Smith (Civ. App.), 126 S. W. 660.

An action for injunction held maintainable by a county tax collector to enjoin collection of a judgment for delinquent taxes recovered by the county by persons unauthorized by law to receive it. Stringer v. Holle, 47 C. A. 632, 105 S. W. 1146.

Action against the State officers to enjoin collection tax held not a suit against State. Galveston, H. & S. A. Ry. Co. v. Davidson (Civ. App.), 93 S. W. 436; Texas & P. Ry. Co. v. Stephens, Id.; Gulf, C. & S. F. Ry. Co. v. Davidson, Id.; Missouri, K. & T. Ry. Co. of Texas v. Same, Id.; International & G. N. R. Co. v. Stephens, Id.; St. Louis Southwestern Ry. Co. of Texas v. Davidson, Id.; State v. Galveston, H. & H. Ry. Co. of 1882, 93 S. W. 460, 469; Texas & P. Ry. Co. v. State, 93 S. W. 461, 469; St. Louis Southwestern Ry. Co. of Texas v. Same, Id.; Missouri, K. & T. Ry. Co. of Texas v. Same, 93 S. W. 463, 469; Texas & N. O. R. Co. v. Same, Id.; Galveston, H. & S. A. Ry. Co. v. Same, 93 S. W. 464, 469; International & G. N. R. Co. v. Same, 93 S. W. 465, 469; Ft. Worth & D. C. Ry. Co. v. Same, Id.; Chicago, R. I. & G. Ry. Co. v. Same, 93 S. W. 466, 469; San Antonio & A. P. Ry. Co. v. Same, Id.; State v. St. Louis, B. & M. R. Co., 93 S. W. 467, 469; Gulf, C. & S. F. Ry. Co. v. Same, Id.; Texas Midland R. Co. v. Same, 93 S. W. 468, 469.

Any action to restrain an independent school district from issuing bonds to raise money for school purposes and from levying a tax on property in the district to pay the same is not held objectionable as a collateral attack on the corporate existence of the district. Parks v. West, 102 Tex. 11, 111 S. W. 726.

A suit against officers of a county to restrain the collection of taxes assessed against property is not a suit against the State, so as to require the consent of the Legislature to its institution. Porter v. Langley (Civ. App.), 155 S. W. 1042.

A property owner who has not paid taxes assessed against him, nor offered to pay them, cannot sue to enjoin an excessive levy. McMahan v. Morgan (Civ. App.), 151 S. W. 1123.

On suit to restrain the collection of taxes, that excessive property was levied on is not available to plaintiff. *Id.*

Order by county commissioners' court held sufficient as a levy of county tax. *Dawson v. Ward*, 71 Tex. 72; *C. R. & C. Co. v. Roberts County*, 27 S. W. 737.

An order to levy a specified tax "for court house and jail" sufficiently indicates its purpose. *Ranch & Cattle Co. v. Roberts County*, 27 S. W. 737.

A tax can not be levied at a called session of the commissioners' court or without the full membership of the court. Revised Statutes, Article 1540; *Free v. Scarborough*, 70 Tex. 672.

The commissioners' court may order and collect a tax for the county equal to one-half of the State occupation tax. No particular form for such order is prescribed by law. *Wade v. State*, 22 Tex. Cr. App. 629.

Municipal corporations can not levy an occupation tax not authorized by the statutes or its charter. *Laredo v. Lowry*, 4 Cr. App. 320.

That portion of this article, to-wit: "Provided, any one wishing to pursue any of the vocations named in this chapter, upon which county occupation tax may be levied, may do so by paying the same quarterly" is repealed by Chapter 18, Acts of the First Called Session of the Twenty-fifth Legislature. The county occupation tax must be paid annually in advance on occupations upon which the State tax is payable annually. Opinion of Attorney General.

90. All Taxes Payable in Currency or Coin of United States—Exception.—The taxes herein levied by this chapter are hereby made payable in the currency or coin of the United States; provided, that persons holding scrip issued to themselves for services rendered the county may pay their county ad valorem taxes in such scrip. [R. S. Art. 7358, Acts 1897.]

County scrip received for taxes is no longer evidence of a debt. *Wharton County v. Ahlday*, 84 Tex. 12, 19 S. W. 291.

91. Collector of Taxes to Keep Books for Certain Purposes.—The collector of taxes shall keep a book of such size and character as may be necessary, in which shall be entered quarterly, at the following dates, to-wit, January 1, April 1, July 1 and October 1, or within ten days thereafter, in which to require the returns to be made under the provisions of this chapter, the several amounts as shown by such returns for which and upon which any person, firm or association of persons is or may be liable to a tax upon occupations under Article 7355; and within fifteen days from the time of receiving and making up the several amounts and the sums due upon such amounts as occupation tax, the collector shall forward to the Comptroller of Public Accounts a transcript or duplicate of the return and the amount as shown by his record, this transcript and record from which it is taken to show the amount of such quarterly returns and the tax due thereon from every person, firm

or association of persons liable to such tax; provided, that nothing contained in this article is intended to affect the liability, which, in the absence of this statute, would be incurred under any special enactment of this State. [R. S. Art. 7359, Acts 1879.]

92. Comptroller to Furnish Tax Collector Certain Books, Etc.—The Comptroller of Public Accounts shall be authorized and required to furnish tax collectors the necessary books and blanks required to be used by such collectors under the provisions of this chapter. [R. S. Art. 7360, Acts 1879.]

If the Comptroller refuses to furnish the tax collector with blank license, he may be compelled to do so by mandamus. *Tax Collector v. Finley*, 88 Tex. 515.

93. Occupation Taxes to Be Paid Before Business Begins.—The payment of the specific tax herein provided for shall be required by the collector of taxes to be made before any person, firm or association of persons shall be allowed to engage in any occupation requiring a license under the provisions of this law, this payment to be made for a period not less than three months. All arrearages of taxes that may be due by reason of any such business having been carried on shall be a lien upon all the stock and fixtures owned or used in or making a part of any business or vocation liable to such tax under the provisions of this chapter, and which lien shall authorize the collector to sell, after due notice, so much stock or other personal property of any person, firm or association of persons owing taxes under the provisions of this chapter, as will satisfy such claim, together with the cost of such proceeding. [R. S. Art. 7361.]

Under Article of the Revised Statutes, as amended by Chapter 18, Acts of the First Called Session of the Twenty-fifth Legislature, the tax is required to be paid annually, hence that portion of this Article, to wit, "this payment to be made for a period of not less than three months," is repealed. Ruling of Comptroller.

A person required to pay an occupation tax must pay it before pursuing his occupation. *Lewis v. State*, 14 Tex. Cr. App. 230; *Curry v. State*, 28 Tex. Cr. App. 447.

94. Comptroller to Furnish Occupation Tax Receipts to Collectors.—The Comptroller shall cause occupation tax receipts for each occupation to be printed, with his signature, for all occupations payable to the collectors, annual receipts for those that are paid annually, and quarterly receipts for all that can be paid quarterly; such receipts shall state the name of the occupation and the amount

of the tax, and have blanks for the year, month and name of the licensee, and also have a blank space for signature of the collector; these receipts shall each have a stub attached, stating briefly the substance of the attached receipt, and shall be bound in books; and he shall forward to each collector a proper number of said receipts, and charge him with the amount represented therein, and cause him to account therefor. The collector, whenever collecting any occupation tax, shall fill the blanks in the receipt and stub by writing thereon the time for which he collects and the name of the licensee, and shall sign the receipt and stub officially; and no person shall pursue any occupation, unless he has a receipt, signed as herein provided, by the Comptroller and collector; and every person, firm or corporation keeping an office or having a local place of business shall keep posted up in a conspicuous place his or their said licenses. [R. S. Art. 7362.]

95. Account of Receipts to Be Furnished Commissioners.—When the Comptroller furnishes collectors with blank occupation tax receipts, he shall furnish the commissioners' courts with the numbers and value of the receipts furnished to their respective collectors; and such courts shall charge their respective collectors with the number and such proportion of the value of the receipts so furnished as shall apply to the county tax, when such collectors shall make their settlements with the Comptroller. The Comptroller shall furnish the commissioners' court with the numbers and value of the receipts returned, and with the amount of the occupation taxes collected by their respective collectors. [R. S. Art. 7363.]

96. May Transfer License on Books.—Any person, firm, corporation or association of persons, who shall be the legal owners or holders of any unexpired occupation license issued in accordance with the laws of this State, shall be and are hereby authorized to transfer the same on the books of the officer by whom the same was issued. [R. S. Art. 7364.]

It seems that where an occupation tax license has been sold by the party to whom it was issued, a right therein may pass to the vendee, although the transfer may not have been entered as provided by statute on the books of the officer who issued it. *Cox v. Trent*, 1 C. A. 639, 20 S. W. 1118.

A transfer by deed without entry on the books of the officer is valid as between the parties. *Michelson v. White* (Civ. App.), 25 S. W. 801.

The failure of the purchaser of an unexpired license to have the transfer thereof made upon the books of the officer by whom it was issued, and his failure to file with the county clerk an application designating therein the particular house in which he proposed to conduct his business under the unexpired license, and his failure to have such designation made in

the license, does not render void his "liquor dealer's" bond. *Faulkner v. Cassidy*, 39 C. A. 415, 87 S. W. 906.

97. Purchaser of Unexpired License May Pursue Occupation, When, Etc.—The assignee or purchaser of such unexpired occupation license shall be authorized to pursue such occupation under such unexpired license for and during the unexpired term thereof; provided, that such assignee or purchaser shall, before following such occupation, comply in all other respects with all the requirements of the law provided for in original applications for such licenses; and provided, further, that nothing in this law shall be so construed as to authorize two or more persons, firms, corporations or association of persons to follow the same occupation under one license at the same time; and provided, further, that whenever any person, firm, corporation or association of persons following an occupation shall be closed out by legal process, the occupation license shall be deemed an asset of said person, firm, corporation or association of persons, and sold as other property belonging to said person, firm, corporation or association; and the purchaser thereof shall have the right to pursue the occupation named in said license, or transfer it to any other person; provided, such occupation license shall under no circumstances be transferred more than one time. [R. S. Art. 7365.]

The statute treats a liquor license as assignable property and subject to be disposed of by legal process. *Nicolini v. Langermann* (Civ. App.), 104 S. W. 501.

A liquor license may be mortgaged. *Nicolini v. Langermann* (Civ. App.), 104 S. W. 501.

The fact that the purchaser of a mortgaged liquor license had it transferred to his firm, instead of himself, did not affect the mortgagee's right to sue him alone. *Id.*

Where the debt secured by a mortgage on a liquor license was less than the market value of the license, it was error to allow a recovery of its market value. *Id.*

98.—Governor May Appoint State Revenue Agent—Duties of His Office.—The Governor is authorized to appoint a suitable person as revenue agent for the State, for the purpose of securing a better enforcement of the revenue laws of the State. The agent provided for herein shall be known as the State Revenue Agent. Said revenue agent shall be subject to the directions of the Governor, who may, whenever in his judgment the public service demands it, direct the said revenue agent to investigate books and accounts of the assessing and collecting officers of this State, and all officers and persons disbursing, receiving or having in their possession public

funds, and to make such other investigations and perform such other duties in the interest of the public revenues as the Governor may direct. Whenever any such investigation is ordered by the Governor, the revenue agent shall report to him in writing the results of such investigation, and point out the particulars, if any, wherein the revenue laws have been violated, their enforcement neglected, together with the names of the parties delinquent therein. Whereupon the Governor shall institute civil and criminal proceedings through the Attorney General in the name of the State against such delinquent parties who are reported by such agent to be delinquent. Said revenue agent shall have power at any time to examine and check up all and any disbursements or expenditures of money appropriated for any of the State institutions or for any other purpose or for improvements made by the State on State property or money received and disbursed by any board authorized by law to receive and disburse any State money. Said revenue agent shall also have power and authority, and it is hereby made his duty, to fully investigate any and all State institutions when so directed by the Governor or required by information coming to the knowledge of said agent. He shall investigate the manner of conducting the same and the policy pursued by those in charge thereof, and the conduct or efficiency of any person employed therein by the State. He shall examine into and report the character and manner as well as the amount of expenditures thereof. He shall also investigate and ascertain all sums of money due the State from any source whatever, the ascertainment and collection of which does not devolve upon other officers of this State under existing law; and he shall report all such facts to the Governor, who shall proceed therein as provided by this or any other law of this State. [R. S. Art. 7366, Acts. 1891.]

99. State Revenue Agent Shall Have Access to Books.—When said revenue agent, acting under the direction of the Governor, calls on any person connected with the public service to inspect his accounts, records or books, said officers or official so called upon shall submit to said agent all books, records and accounts so called for without delay. [R. S. Art. 7367.]

100. Salary of State Revenue Agent.—Said revenue agent shall receive as compensation for his services not exceeding two thousand dollars per annum, together with his actual traveling expenses, which shall be paid on the approval of the same by the Governor; provided, said revenue agent shall not be allowed traveling expenses for any service connected with the examination and investigation of the accounts of any institution in Travis County. [R. S. Art. 7368.]

CHAPTER V.

OCCUPATION TAXES BASED UPON GROSS RECEIPTS.

(From Chapter 2, Title 126, R. S.)

	SEC.		SEC.
Express Companies to File Annual Reports Showing Gross Receipts	101	Dealer" Defined	112
Telegraph Companies to Report Quarterly—Amount of Tax.....	102	Wholesale or Retail Dealers in Pistols Taxed	113
Gas, Electric Light, Power and Waterworks Companies to Report Each Quarter	103	Text-Book and Law Book Publishers Subject to Tax.....	114
Collecting and Commercial Agencies to Report Quarterly—Must Pay Tax	104	Telephone Companies Subject to Tax—Report Quarterly	115
Stock, Refrigerator and Other Car Companies Taxed	105	Oil Well Owners, Lessees and Companies Taxed	116
Pipe Lines Taxed—To Make Reports Each Quarter—How Determined	106	Terminal Railroad Companies and Owners of Same.....	117
Pipe Line Expert for Railroad Commission—Additional Taxes	107	Tax to Be Paid When Business is Begun After Beginning of Quarter	118
Sleeping, Palace and Dining Car Companies Taxed	108	Penalty for Failure to Make Report in Thirty Days.....	119
Fire, Marine, Life and Other Insurance Companies	109	Penalty for Failure to Pay Tax..	120
Wholesale Oil Dealers—Definition of Same.....	110	Penalty May Be Removed by Attorney General	121
Interurban and Electric Railway Companies Taxed—How Ascertained	111	Permit Not to Be Granted Until Tax is Paid	122
Wholesale Dealers in or Distributors of Liquors; "Wholesale		These Taxes in Addition to All Other Taxes	123
		State Comptroller May Require Additional Reports	124
		State Revenue Agent to Have Access to and Examine Books, When	125

101. Express Companies to File Annual Reports Showing Gross Receipts.—Each and every individual, company, corporation or association doing an express business, by railroad or water, in this State, shall, on or before the first day of March of each year, make a report to the Comptroller of Public Accounts under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts from charges and freights within this State paid to or collected by such individual, company, corporation or association on account of money, goods, merchandise or other character of freight carried within this State during the twelve months next preceding. Said individuals, companies, corporations or associations, at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax for the year beginning on

said date equal to two and one-half per cent of said gross receipts as shown by said report. [R. S. Art. 7369, Act 1907, p. 479, Sec. 1.]

Acts 1905, c. 148, substantially re-enacted by Acts 1907, p. 479, embodied in this chapter, imposing an occupation tax on gross receipts of persons and corporations engaged in certain businesses discussed and held constitutional and valid. *Texas Co. v. Stephens*, 100 Tex, 628, 103 S. W. 481; *Southwestern Oil Co. v. State*, 100 Tex. 647.

Where occupation tax imposed by Acts Twenty-ninth Legislature, c. 148, was levied against a business in that State, it was proper that sales and deliveries outside the State should be included in fixing volume of business to fix the amount of tax. *Texas Co. v. Stephens*, 100 Tex, 628, 103 S. W. 481.

Where a person or corporation carries on several different businesses on which a tax is imposed by Acts Twenty-ninth Legislature, p. 358, c. 148, each business is subject to tax as a separate business. Id.

Under Art. 7369, R. S. which imposes a gross earnings tax on an express company doing business either on railroad or by water in the State, the word "railroad" is not limited to commercial steam roads but also includes interurban roads run by electricity. *North Texas and W. Co. v. State* (Tex. Civ. App.), 169 S. W. 1045.

102. Telegraph Companies to Report Quarterly—Amount of Tax.
—Each and every individual, company, corporation or association owning, operating, controlling or managing any telegraph lines in this State, or owning, operating, controlling or managing what is known as wireless telegraph stations, for the transmission of messages, or aerograms and charging for the transmission of such messages or aerograms, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller of Public Accounts, under oath of the individual, or of the president, treasurer or superintendent of such companies, corporation or association, showing the gross amount received from all business within this State during the preceding quarter, in the payment of telegraphic or aerogram charges, including the amount received on full rate messages and aerograms and half rate messages and aerograms, and from the lease or use of any wires or equipment within the State during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date equal to two and three-fourths per cent of said gross receipts as shown by said report. [R. S. Art. 7370.]

An occupation tax imposed on telegraph companies which graduates the tax according to the business done, regardless of a distinction between business done wholly within the State and business done in part without

the State, is free from the objection that it regulates or obstructs interstate commerce. *W. U. T. Co. v. State*, 55 Tex. 314.

103. Gas, Electric Light, Power and Waterworks Companies to Report Each Quarter.—Each and every individual company, corporation or association, owning, operating or managing or controlling any gas, electric light, electric power or waterworks or water and light plant, within this State and charging for gas, electric lights, electric power or water, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller of Public Accounts under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the gross amount received from the business done within this State in the payment of charges for gas, electric lights, electric power and water for the quarter next preceding. Said individual, company, corporation or association, at the time of making said report for any town or city of ten thousand inhabitants and less than twenty-five thousand inhabitants shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date equal to one-fourth of one per cent of said gross receipts, as shown by said report; and, for any town or city of twenty-five thousand inhabitants or more, the said individual, company, corporation or association, at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date an amount equal to one-half of one per cent of said gross receipts as shown by said report; provided, that nothing herein shall apply to any gas, electric light, electric power or waterworks or water and light plant within this State owned by any city or town. [R. S. Art. 7371.]

104. Collecting and Commercial Agencies to Report Quarterly—Must Pay Tax.—Each and every individual, company, corporation or association, owning, operating, managing or controlling any collecting agency, commercial agency, or commercial reporting credit agency within this State, and charging for collections made, or business done, or reports made, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller of Public Accounts under oath of the individual or of the president, treasurer, or superintendent of such company, corporation or association, showing from business done within this State the gross amount received in the payment of charges for collections made and business done and reports made during the quarter next preceding. Such individuals, companies, corporations or associations at the time of making said report shall pay to the

Treasurer of the State of Texas an occupation tax for the quarter beginning on said date equal to one-half of one per cent of said gross receipts as shown by said report. [R. S. Art. 7372.]

105. Stock, Refrigerator and Other Car Companies Taxed.—Each and every individual, company, corporation or association, residing without the State of Texas, or incorporated under the laws of any other State or territory, or nation, and owning stock cars, refrigerator and fruit cars of any kind, tank cars of any kind, coal cars of any kind, furniture cars or common box cars and flat cars, and leasing, renting or charging mileage for the use of such cars within the State of Texas, shall make quarterly, on the first days of January, April, July and October of each year, and report to the Comptroller of Public Accounts under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts from such rentals, or mileage, or from other sources of revenue received from business done within this State, during the quarter next preceding. Said individuals, companies and corporations, and associations, at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date equal to three per cent of said gross receipts as shown by said report. [R. S. Art. 7373.]

106. Pipe Lines Taxed—to Make Reports Each Quarter—How Determined.—Each and every individual, company, corporation or association, whether incorporated under the laws of this State, or of any other state or territory, or of the United States, or of any foreign nation, which owns, manages, operates, leases or rents any pipe line or pipe lines within this State, whether such pipe line or pipe lines be used for transmission of oil, natural or artificial gas, whether such oil or gas be for illuminating or fuel purposes, or for steam, for heat or power, or for any other purpose, and whether such pipe line or pipe lines be used for the transmission of articles by pneumatic or other power, shall, on or before the first days of January, April and October of each year, pay to the State of Texas an occupation tax equal to two per cent of its gross receipts, if such pipe line or pipe lines lie wholly within this State; and, if such pipe line or pipe lines lie partly within and partly without the State, such individuals, companies, corporations and associations shall pay a tax equal to two per cent of such proportion of its gross receipts, as the length of such line or lines within the State bears to the whole length of such line or lines; provided, that if satisfactory evidence is submitted to the Comptroller of Public Accounts at any time prior to the date fixed by this article for the payment

of the tax herein imposed, that any other proportion more fairly represents the proportion which the gross receipts of any pipe line or pipe lines for any quarter within this State bears to its total gross receipts, it shall be his duty to collect for such quarter from every such pipe line or pipe lines a tax equal to such other proportion of two per cent of its total gross receipts. For the purpose of determining the amount of such tax, the individual or the president, treasurer or superintendent of such company, association or corporation, shall quarterly, on the dates aforesaid, make a report to the Comptroller of Public Accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the gross receipts of such pipe line or pipe lines from every source whatsoever for the quarter next preceding, and shall immediately pay to the State Treasurer an occupation tax for the quarter beginning on said date, calculated on the gross receipts so reported. [R. S. Art. 7374.]

Relative to taxation on pipe line companies under Acts Twenty-ninth Legislature, p. 358, c. 148, re-enacted with modifications in 1907 and embodied in this article. *Texas Oil Co. v. Stephens*, 100 Tex. 628; 103 S. W. 481.

107. Pipe Line Expert for Railroad Commission—Additional Taxes.—It shall be the duty of the Commission to employ an expert who shall gather information and assist the Commission in the performance of its duties under this Act. The salary of this expert shall be at the rate of thirty-six hundred dollars per annum, payable in equal monthly installments. And the Commission shall employ such other assistants as may be necessary. These salaries and expenses and the expenses of the hearings and investigations conducted by said Commission shall be paid out of a fund to be derived from a tax of one-twentieth of one per cent of the market value of crude petroleum produced within this State, which tax is hereby levied, and which tax shall be in addition to and collected in the same manner as the present gross receipts production tax on crude petroleum. Producers of crude petroleum are hereby required to make reports of production in the same manner and under the same penalties as for the gross production tax. The tax thus collected shall be paid into the State treasury as other revenue, and shall be paid out in warrants as other State funds. Any yearly excess of the tax over and above the requirements of the Commission shall become a part of the general revenue of the State and any deficit shall be made up out of the general revenue of the State. [Sec. 11, Acts 1917, p. 48.]

108. Sleeping, Palace and Dining Car Companies Taxed.—Every sleeping car company, palace car company, or dining car company doing business in this State, and each individual company, corporation or association leasing or renting, owning, controlling or managing any palace cars, dining cars, or sleeping cars within this State for the use of the public, for which any fare is charged, shall, on the first days of January, April, July and October of each year, report to the Comptroller of Public Accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts earned from any and all sources whatever within this State, except from receipts derived from buffet service, during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date equal to five per cent of said gross receipts as shown by said report. The tax herein provided for shall be in lieu of all other taxes now levied upon sleeping car, palace car or dining car companies, except the tax of twenty-five cents on the one hundred dollars of the capital stock of such car companies as provided by law. [R. S. Art. 7375.]

109. Fire, Marine, Life and Other Insurance Companies.—Every fire, fire and marine, marine and marine inland insurance company, and every life and accident, life and health, accident, credit, title, steam boiler, live stock, fidelity, guaranty, surety, and casualty company, and all other insurance companies doing business in this State, except fraternal life and domestic benevolent life insurance companies, and life insurance companies at the time of filing its annual statement, shall report to the Commissioner of Insurance and Banking the gross amount of premiums received in the State upon property located in the State, and from persons residing in this State, during the preceding year; and each of such companies shall pay an annual tax upon such gross premium receipts as follows: All companies enumerated above shall pay a tax of two per cent of such gross premiums; provided, that any company doing life insurance business in connection with any other class of insurance enumerated shall pay the same tax upon the gross receipts from life insurance of a company conducting a purely life insurance business; and the gross premium receipts are understood to be a premium receipt reported to the Commissioner of Insurance and Banking by the insurance companies upon the sworn statement of two principal officers of such companies. Upon receipt by him of sworn statements showing the gross premium re-

ceipts by such companies, the Commissioner shall certify to the State Treasurer the amount of taxes due by each company, which tax shall be paid to the State Treasurer for the use of the State, on or before the first of March following, whose receipt shall be evidence of the payment of such taxes; and no insurance company shall receive a permit to do business in this State until such taxes are paid. And if any such insurance company shall have as much as one-fourth of its entire assets, as shown by said sworn statement, invested in any or all of the following securities: Real estate in the State of Texas, bonds of the State or of any county, incorporated city or town of this State, or other property in this State in which by law such companies may invest their funds, then the annual tax of any such companies shall be one per cent of its said gross premium receipts; and, if any such company shall invest as aforesaid as much as one-half of its assets, then the annual tax of such company shall be one-half of one per cent of its gross premium receipts, as above defined; and provided, further, that no occupation tax shall be levied on insurance companies, herein subjected to a gross premium receipt tax, by any county, city or town; provided also that all mutual fraternal benevolent associations, now or hereafter doing a life insurance, or a life and accident insurance business in this State under the lodge system and on the assessment plan, whether organized under the laws of this State, or a foreign state or country, are exempt from the provisions of this article. The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this State against any such insurance companies; and no occupation or other taxes shall be levied on or collected from any insurance company by any county, city or town, but this law shall not be construed to prohibit the levy and collection of State, county and municipal taxes upon the real and personal property of such companies; provided, that this shall not relieve agents from paying an occupation tax; provided, further, that purely co-operative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own property and not for profit shall be exempt from the provisions of this chapter. [R. S. Art. 109.]

Acts 1911, p. 216, Sec. 1, amends Acts 1907, ch. 18 (p. 497), Sec. 8, so as to read as above. Acts 1911, p. 216, Sec. 2, repeals all laws in conflict, etc. Said Section 8 was contained in Rev. Civ. Stat. 1911, Art. 7376, which is superseded hereby. Acts 1910, 4 S. S., ch. 8 (p. 125), was repealed by Acts 1913, p. 195. See note to Art. 4903.

The words "gross amount of premiums received," in statute imposing a tax on insurance companies on the premiums received, held to include the sums paid for reinsurance and the sums returned to policyholders on

the cancellation of policies as therein provided. *Fire Ass'n of Philadelphia v. Love*, 101 Tex. 376, 108 S. W. 158, 810.

NOTE.—See chapter herein for other laws relating to taxation of Insurance Companies.

Acts 1907, p. 482, Sec. 8, embodied in this article, must prevail so far as there is a conflict between it and paragraph 7 of Article 3084, Rev. St. 1895. The act of 1907 prescribes with certainty what the report of the fire insurance company shall be on the subject of the gross receipts and its terms are not modified by the former law. *Fire Association v. Love*, 101 Tex. 376, 108 S. W. 158, 810.

An insurance company organized under the laws of another State has not complied with the Acts of 1907, c. 170, re-enacted with modifications in 1909, embodied in Article 4775 et seq., when it shows that it is exempt from the provisions of the act, so as to entitle it to the one per cent tax rate upon its gross receipts. The fact that it is exempt for two years from complying with the Act of April 24, 1907 (Sections 3 and 6), is not a compliance with the Act. *Kansas City Life Ins. Co. v. Love*, 101 Tex. 531, 109 S. W. 863.

The tax assessed for 1908 upon an insurance company, is not a tax upon the gross receipts of the company for 1907 during which year up to August 14th, the rate prescribed by a previous law prevailed, but it was an occupation tax for 1908 based on the receipts of 1907, and effected in no way the tax payable in 1907. *Id.*

110. Wholesale Oil Dealers—Definition of Same.—Each and every individual, company, corporation or association created by the laws of this State, or any other state or nation, which shall engage in his own name, or in the name of others, or in the name of its representatives, or agents in this State in the business of wholesale dealers in coal oil, naphtha, benzine or any other mineral oils refined from petroleum, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller of Public Accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the gross amount collected and uncollected from any and all sales made within this State of any of said articles during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date equal to two per cent of said gross receipts and amount uncollected from said sales as shown by said report. A wholesale dealer, within the meaning of this article, is any individual, company, firm, partnership, corporation or association who buys any of the articles hereinbefore mentioned, either in his own name or in the name of others, or in the name of their representative or agent, and sells same either in his name, or in the name of others, or in the name of their representa-

tives or agents, to any person, firm, corporation or association to be sold again. [R. S. Art. 7377.]

One engaged in the wholesale oil business is a wholesale dealer whether he buys the oil to sell again or buys crude oil and refines it into different petroleum products and sells them. *Texas Co. v. Stephens*, 100 Tex. 628, 103 S. W. 481.

Acts Twenty-ninth Legislature p. 364, c. 148, Sec. 9, substantially re-enacted in 1907 and embodied in this article, is not invalid. *Texas Co. v. Stephens*, 100 Tex. 628, 103 S. W. 481.

In determining the amount of a tax, wholesale sales to consumers and to retailers are properly included in fixing the volume of business. *Texas Co. v. Stephens*, 100 Tex. 628, 103 S. W. 481.

111. Interurban and Electric Railway Companies Taxed—How Ascertained.—Each and every individual, company, corporation or association, owning, operating or controlling any interurban, trolley, traction or electric street railway in this State and charging for transportation on said railway, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller of Public Accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts from said charges for transportation on said railway paid to or uncollected by said individuals, company, corporation or association for the quarter next preceding. Said individual, company, corporation or association, at the time of making said report, if in or if connecting any town or city of less than twenty thousand inhabitants, shall pay to the Treasurer of the State as an occupation tax for the quarter beginning on said date equal to one-half of one per cent of said gross receipts as shown by said report; if in a city of more than twenty thousand inhabitants, said individual, company or corporation or association, at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date equal to three-fourths of one per cent of said gross receipts as shown by said report; provided, that in ascertaining the population of any city or town, the same shall be ascertained by the last United States census; and provided, further, that where any interurban railroad shall connect any town having a population of more than twenty thousand with another of a less population, that it shall be liable for the taxes measured by the population of the largest town; provided, further, that the provisions of this chapter shall not apply to any street railway or traction company wholly within any town of less than ten thousand inhabitants. [R. S. Art. 7378.]

This is but an additional tax to the one levied under Art. 7355, subd. 34, the last named article not being repealed. *Dallas Consol. Electric St. Ry. Co. v. State*, 102 Tex. 507, 102 S. W. 997, affirming (Civ. App.), 118 S. W. 881.

112. Wholesale Dealers in or Distributers of Liquors; "Wholesale Dealer" Defined.—Each and every individual, company, corporation or association created by the laws of this State or any other state, who shall engage in his own name or in the name of others, or in the name of its representatives or agents in this State, in the business of wholesale dealer or a wholesale distributor of spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller of Public Accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the gross amount collected and uncollected from any and all sales made within this State of any of said articles during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date, equal to one-half of one per cent of said gross receipts from said sale as shown by said report.

A wholesale dealer or distributor, within the meaning of this Section, is any individual, company, association or corporation selling any of the articles hereinbefore mentioned in any quantity, for cash or on credit, either in his own name or in the name of others, or in the name of its representatives or agents, to retail dealers or to consumers, not to be drunk on the premises, or who deliver on consignment to their agents for retail or for delivery to consumers, provided the above shall not apply to sales to consumers, where the liquor sold is delivered to the purchaser in person, at the dealer's place of business and at time of sale, and where the amount sold does not exceed one gallon.

For the purpose of ascertaining the amount of gross receipt tax due each quarter by each and every individual, company, corporation, or association created by the laws of this State or in any other state, who shall engage in his own name or in the name of others, or in the name of its representatives or agents in this State in the business of a wholesale dealer or a wholesale distributor of spirituous, vinous or malt liquor or medicated bitters capable of producing intoxication, it shall be the duty of each and every individual, company, corporation or association selling any of the articles hereinbefore mentioned either in his own name or in the name of others, or in the name of its representatives or agents, to keep a plain,

legible record of the date of each and every such sale or consignment, the name and address of the retail dealer or individual to whom sold or consigned, the quantity, the price, and the manner in which shipment or delivery was made; and this record shall be subject to the inspection of the Comptroller of [or] State Revenue Agent or their representatives at any time they see proper to investigate said records.

Any person, company, corporation or association, or any receiver or receivers failing to keep a record as provided for in this Act, shall forfeit and pay to the State of Texas a penalty not exceeding one thousand dollars. [R. S. Art. 7379, as amended Acts 1913.]

In this article the term "gross receipts," though ordinarily meaning the gross amount of cash received, includes the gross amount collected and uncollected of all the sales, on which amount the percentage must be computed to determine the tax. *Eppstein v. State* (Civ. App.), 138 S. W. 1124.

The tax imposed by this article is a tax on the gross sales whether collected or uncollected during the preceding quarter; the word "receipts," when used in a commercial sense, meaning the receiving of obligations or promises to pay, whether written or verbal, as well as cash. *Eppstein v. State*, 105 Tex. 35, 143 S. W. 144.

113. Wholesale or Retail Dealers in Pistols Taxed.—Each and every individual, company, corporation or association created by the laws of this State or any other state, who shall engage in his own name or in the name of others, or in the names of its representatives or agents in this State, in the business of a wholesale or retail dealer of pistols, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller of Public accounts, under oath of the individual or of the president, treasurer or superintendent of said company, corporation or association, showing the gross amount collected and uncollected from any and all sales made within this State of all such firearms during the quarter next preceding. Such individuals, companies, corporations and associations at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date equal to fifty per cent of said gross receipts from sales of all firearms as shown by said report. [R. S. Art. 7380.]

See *Eppstein v. State* (Civ. App.), 138 S. W. 1124; *Caswell & Smith v. Same*, 148 S. W. 1159.

This article is a valid exercise of the police power, since the immediate and direct result of the pursuit of the business of selling pistols may be regarded as harmful to the best interests of society, and, though the statute imposes a tax, it does not lose its character as a police regulation. *Caswell & Smith v. State* (Civ. App.), 148 S. W. 1159.

This article is not violative of Const. Bill of Rights, Sec. 23, guaranteeing to every citizen the right to bear arms, since the act does not infringe or attempt to infringe the right of the citizen to bear arms, nor does it prohibit a dealer in the State from selling them; and, if it did, the statute would not be violative of the constitutional guaranty. *Caswell & Smith v. State* (Civ. App.), 148 S. W. 1159.

Contracts for lease of pistols are only for the purpose of evading the provisions of the gross receipts tax law. They are merely subterfuges, and their only purpose is to provide immunity to those dealers against the payment of the fifty per cent gross receipts tax. Ruling of Attorney General of Attorney General, p. 670, 1912-14.

114. Text Book and Law Book Publishers Subject to Tax.—Each and every individual, company, corporation or association, whether incorporated under the laws of this State, or of any other State or nation, engaged in publishing, printing, or selling text-books used in the schools of this State, or law books of any character, or owning, controlling or managing any such business, as text-books or law book purchasers, within the State or out of it, and having State agencies within this State for the purpose of selling any book or books to be used in any of the schools of this State, or any law books, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller of Public Accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, or of the person owning, controlling or managing any such business, showing the gross amount received from such business done within this State from any and all sources during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date equal to one per cent of said gross receipts, as shown by said report. [R. S. Art. 7381.]

115. Telephone Companies Subject to Tax—Report Quarterly.—Each and every individual, company, corporation or association owning, operating, managing or controlling any telephone line or lines or any telephones within this State, and charging for the use of the same, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller of Public Accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the gross amount received from all business within this State during the preceding quarter, in the payment of charges for the use of its line or lines, telephone and telephones, and from the lease or use of any wires or equipment within this State during

said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax, for the quarter beginning on said date, equal to one and one-half per cent of said gross receipts, as shown by said report. [R. S. Art. 7382.]

116. Oil Well Owners, Lessees and Companies Taxed.—Each and every individual, company, corporation or association, whether incorporated under the laws of this or any other state or territory, or of the United States, or any foreign country, which owns, controls, manages or leases any oil well within this State, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller of Public Accounts under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the total amount of oil produced during the quarter next preceding and the average market value thereof during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date equal to one-half of one per cent of the total amount of all oil produced, at the average market value thereof, as shown by said report. [R. S. Art. 7383.]

The tax imposed on operators of oil wells by Acts Twenty-ninth Legislature, p. 358, ch. 148, is an occupation tax.

The penalties provided for are disproportionate to the amount of the taxes and it was proper for the court to refuse to render judgment for the penalties. *Producers' Oil Co. v. Stephens*, 44 C. A. 327, 99 S. W. 157.

That part of Acts Twenty-ninth Legislature c. 148, re-enacted with modifications in 1907, and embodied in this article, imposing one per cent tax on gross products of the wells, is not unconstitutional. *Producers' Oil Co. v. Stephens*, 44 C. A. 327, 99 S. W. 157; *Texas Oil Co. v. Stephens* (Civ. App.), 99 S. W. 160.

The occupation tax provided for by Article 7383, Revised Statutes, on all persons owning, controlling or leasing oil wells applies to persons who lease land from the State under Chapter 173 of the General Laws of the Regular Session of the Thirty-third Legislature for the development of oil. Ruling of Attorney General, p. 611, 1912-14.

The tax provided for by Article 7383 of the Revised Civil Statutes is an occupation tax levied upon the occupation of owning, controlling or managing oil wells, and is not a tax on the products of oil wells. Ruling of Attorney General, p. 609, 1912-14.

A person who owns, controls or manages a producing oil well must pay the occupation tax on the total amount of the oil produced from the well, and if the well or the land on which the well is situated is leased by the person operating the well on a royalty basis, he paying for his lease a certain per cent of the total amount of the oil produced, the person managing or operating the well must report the total amount of the oil produced from

the well and must pay tax on such amount of the oil produced from the well without deducting from the amount reported or from the amount by which the tax is measured the percentage of the oil which is paid as royalty or for the lease. Ruling of Attorney General, p. 609, 1912-14.

Where an individual company, corporation or association is engaged in a business subject to a gross receipt tax upon which business the gross receipt tax has been paid, makes a sale of such business, the purchaser thereof is not subject to the beginning quarter tax. Ruling of Attorney General, p. 659, 1914-16.

117. Terminal Railroad Companies and Owners of Same.—Each and every individual, company, corporation or association, whether incorporated under the laws of this or any other state, or territory, or of the United States, or any foreign country, which owns, controls, manages or leases any terminal companies, or any railroad doing a terminal business within this State, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller of Public Accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the total amount of its gross receipts from all sources whatever within this State, during the quarter next preceding, and the average market value thereof during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date equal to one per cent of the total amount of its gross receipts from all sources whatever, as shown by said report. [R. S. Art. 7384.]

The question whether a tax upon an interstate carrier measured by its gross earnings, including interstate earnings is a tax upon interstate commerce and beyond the power of the State to impose, is controlled by the decisions of the United States Supreme Court. *Houston Belt & Terminal Ry. Co. v. State*, 192 S. W. 1054.

The occupation tax levied by Rev. St. 1911, Art. 7384, upon railways measured by their gross receipts, a substantial part of which are derived from interstate commerce, which tax is additional to the ad valorem tax assessed against its property and its franchise tax, cannot be sustained as an attempt to tax the railway's value as a going concern in addition to the value of its separate properties, but is a burden of interstate commerce, and therefore invalid and unconstitutional. *Houston Belt & Terminal Ry. Co. v. State*, 192 S. W. 1054.

NOTE.—Article 7384, R. S. 1911, unconstitutional.

118. Tax to Be Paid When Business Is Begun After Beginning of Quarter.—If any individual, company, corporation, firm or association, in this chapter mentioned, shall begin and engage in any business for which there is an occupation tax herein imposed, on or after the beginning day of the quarter for which said tax is imposed,

then, and in all such cases, the amount of such tax for said beginning quarter shall be and is hereby fixed at the sum of fifty dollars, payable to the Treasurer of the State of Texas in advance, but for the next succeeding quarter, and all other succeeding quarters, the tax shall be determined by reports to the Comptroller of Public Accounts of the business for the preceding quarter, or part thereof, as herein otherwise in this chapter provided; and reports and payments of such tax shall be made subject to all other provisions of this chapter. [R. S. Art. 7385.]

119. Penalty for Failure to Make Report in Thirty Days.—Any person, company, corporation or association, or any receiver or receivers, failing to make report for thirty days from the date when said report is required by this chapter to be made, shall forfeit and pay to the State of Texas a penalty of not exceeding one thousand dollars. [R. S. Art. 7386.]

120. Penalty for Failure to Pay Tax.—Any person, company, corporation or association, or any receiver or receivers, failing to pay any tax for thirty days from the date when said tax is required by this chapter to be paid, shall forfeit and pay to the State of Texas a penalty of ten per cent upon the amount of such tax. [R. S. Art. 7387.]

121. Penalties May Be Recovered by Attorney General.—The penalties provided for by this chapter shall be recovered by the Attorney General in a suit brought by him in the name of the State of Texas; and venue and jurisdiction of such suit is hereby conferred upon the courts of Travis County, Texas. [R. S. Art. 7388.]

The Legislature has the power under the Constitution to create causes of action in favor of the State and to make it the exclusive duty of the Attorney General to prosecute such suits. *Brady v. Brooks*, 99 Tex. 66, 89 S. W. 1053.

A suit against State officials to restrain them from collecting a privilege tax imposed by Acts Twenty-ninth Legislature, p. 358, c. 148, re-enacted with modifications in 1907 and embodied in Title 126, Chapter 2, is a suit against the State and cannot be maintained without its consent. *Producers' Oil Co. v. Stephens* (Civ. App.), 99 S. W. 160. *Contra.* see *Galveston, H. & S. Ry. Co. v. Davidson* (Civ. App.), 93 S. W. 436.

122. Permit Not to Be Granted Until Tax Is Paid.—No individual, company, corporation or association, failing to pay all taxes imposed by this chapter, shall receive a permit to do business in this State, or continue to do business in the State, until the tax hereby imposed is paid. The receipt of the Treasurer of the State of Texas shall be evidence of the payment of such tax. [R. S. Art. 7389.]

123. These Taxes in Addition to All Other Taxes.—Except as

herein stated, all taxes levied by this chapter shall be in addition to all other taxes now levied by law; provided, that nothing herein shall be construed as authorizing any county or city to levy an occupation tax on the occupations and business taxed by this chapter. [R. S. Art. 7390.]

124. State Comptroller May Require Additional Reports.—If for any reason the Comptroller of Public Accounts is not satisfied with any report from any such person, company, corporation, co-partnership or association, he may require additional or supplemental reports containing information and data upon such matters as he may need or deem necessary to ascertain the true and correct amount of all taxes due by any such person, firm, or corporation. Every statement or report required by this chapter shall have affixed thereto the affidavit of the president, vice-president, secretary or treasurer of the person, corporation, co-partnership or association, or one of the persons or members of the partnership making the same, to the effect that the statement is true. The Comptroller shall prepare blanks to be used in making the reports required by this chapter. [R. S. Art. 7391.]

125. State Revenue Agent to Have Access to and Examine Books, When.—If the Comptroller has reason to believe, or does believe, that any individual, company, corporation, association, receiver or receivers, subject to the provisions of this chapter, has made a false return or has failed or omitted to make a full return of gross receipts, or other statement of business done, required by any of the provisions of this chapter, he shall report the same in writing to the Governor; and it shall be the duty of the Governor to immediately require the Revenue Agent of the State of Texas to examine any books, papers, documents, or other records or evidence showing or tending to show such unlawful act or omission. Said Revenue Agent shall check the report made with such books, papers, documents or other records or evidence, and make his report to the Comptroller; and, if it appears from said report that any false or incorrect return has been made, or that any individual, or the president, treasurer or superintendent of any company, corporation or association, or any member of any firm required by this chapter to make reports, has failed or omitted to make a full return, as required by law, then the Comptroller shall notify such individual, or the president, treasurer or superintendent of any company, corporation or association, or receiver or receivers of any company, corporation or association, or any member of any firm, to make forthwith an additional or supplemental report; and, if any such individual or the president, treasurer or superintendent of any company, corporation or association, or any member of a firm, or any

receiver or receivers of any company, corporation or association making said original report shall fail or refuse to make said additional or supplemental report, he shall be guilty of a misdemeanor, and on conviction shall be punished as provided in the Penal Code; and venue of such prosecution is fixed in Travis County, Texas. If it appears from the report of the State Revenue Agent, or if the Comptroller has reason to believe or does believe, that any individual, or any president, treasurer or superintendent of any company, corporation or association, or any receiver of any corporation or association, or any member of any firm, has wilfully and deliberately made a false report, the Comptroller shall report the matter to the grand jury of Travis County, Texas, for its action; and venue of any offense arising out of such transaction is hereby fixed in Travis County, Texas. Said State Revenue Agent, in the performance and discharge of the duties imposed upon him by this article, shall have the right to examine, either by himself or by any person acting under his direction, any books, papers, documents, records or evidence which he may believe material and proper to examine. [R. S. Art. 7392.]

Acts 1905, ch. 141, imposing a tax upon railroads equal to one per cent of their gross receipts, is valid except that part which imposed a penalty of two hundred dollars a day for failure to pay said tax. *State v. Galveston, H. & S. A. Ry. Co.*, 100 Tex. 153, 97 S. W. 71, reversing *Galveston, H. & S. A. Ry. Co. v. State* (Civ. App.), 93 S. W. 464, and overruling *Galveston, H. & S. A. Ry. Co. v. Davidson* (Civ. App.), 93 S. W. 442.

This law, though invalid as imposing a tax for the part of the year prior to the time it took effect is not void as to remainder of the year, but the court will give effect to it for the remainder of the year. *State v. Galveston, H. & S. A. Ry. Co.*, 100 Tex. 153, 97 S. W. 78.

This law does not apply to the Texas & Pacific Ry. Co., because its charter was granted by Congress, and it is thus constituted an "agency" of the United States Government, the operation of which cannot be hindered by taxation of the State. The tax imposed by this Act is an occupation tax. An agency of the United States Government for the carrying on of its business cannot be taxed by the State in which it operates. *State v. Texas & P. Ry. Co.*, 100 Tex. 279, 98 S. W. 834.

The statute imposing on railroads a gross earnings tax held enforceable, though it cannot apply to a railroad incorporated under an Act of Congress. *State v. Missouri, K. & T. Ry. Co. of Texas* (Sup.), 100 S. W. 146.

The title of the statute imposing a gross earnings tax on railroads held sufficiently broad to embrace railroads owning a line within and one without the State. *Id.*

The statute imposing on railroads a tax on their gross receipts imposes a tax on the gross receipts of railroads derived from whatever source. *Id.*

A State, seeking to recover taxes from railroads in excess of the sum actually due, held not entitled to recover the penalties imposed on railroads failing to pay taxes. *State v. Galveston, H. & S. A. Ry. Co.*, 100 Tex. 153, 97 S. W. 71.

The Legislature has the power under the Constitution to create cause of action in favor of the State and to make it the exclusive duty of the Attorney General to prosecute such suits. *Brady v. Brooks*, 99 Tex. 366, 89 S. W. 1053.

CHAPTER VI.

FRANCHISE TAXES OF CORPORATIONS—PROCEEDINGS FOR FAILURE TO PAY.

(From Chapter 3, Title 126, R. S.)

	Sec.		Sec.
Amount of Franchise Tax to Be Paid by Domestic Corporations	126	Charter May Be Forfeited for Failure to Pay Tax.....	137
Amount of Franchise Tax to Be Paid by Foreign Corporations—How Computed	127	Duty of Secretary of State to Give Notice Before Forfeiture..	138
Part of Annual Tax to Be Paid in Certain Instances	128	Cancellation or Forfeiture in Certain Cases; Forfeiture by Judgment, When, etc.	139
Officers May Be Required to Make Affidavit to Facts.....	129	Foreign Corporations May Surrender Permit and Withdraw from State	140
How Amount of Franchise Tax Due May Be Determined.....	130	Penalty for Corporation Continuing Business After Forfeiture of Charter	141
Certain Reports to Be Filed as Basis of Amount of Tax Due....	131	Gross Receipts Tax Payers Exempt from Paying for Franchise	142
Corporations Subject to Fine as Penalty	132	Duty of Attorney General to Bring Suit	143
Such Reports to Be Treated as Privileged	133	Duty of District Clerk When Charter is Forfeited.....	144
May Be Made by What Officers; How Executed, etc.....	134	Payment of Tax by Corporations in Process of Liquidation.....	145
Laws in Conflict Are Repealed....	135		
Increase in Capital Stock—Supplemental Tax to Be Paid.....	136		

126. Amount of Franchise Tax to Be Paid by Domestic Corporations.—Except as herein provided, each and every private domestic corporation heretofore chartered, or that may hereafter be chartered, under the laws of this State, shall on or before the first day of May of each year, pay in advance to the Secretary of State a franchise tax for the year following, which shall be computed as follows, viz: Fifty cents on each one thousand dollars, or fractional part thereof, of the authorized capital stock of such corporation, unless the total amount of capital stock of such corporation issued and outstanding, plus its surplus and undivided profits, shall exceed its authorized capital stock; and in that event the franchise tax of such corporation for the year following shall be fifty cents on each one thousand dollars of capital stock of such corporations issued and outstanding, plus its surplus and undivided profits; provided, that, such franchise tax shall not in any case be less than ten dollars; provided, that, where the authorized capital exceeds one million dollars, such franchise tax shall be fifty cents for each one thousand dollars up to and including one million dollars, and

for each additional one thousand dollars, in excess of one million dollars, it shall be twenty-five cents. [R. S. Art. 7393, Acts 1907, p. 503, Sec. 1.]

When a corporation's capital exceeds \$1,000,000, the excess of the stock over that amount, plus surplus and undivided profits, is subject to a franchise tax of 25 cents on the \$1,000; the term "excess," in the Act, being intended to embrace capital, surplus, and undivided profits. *Houston & T. C. R. Co. v. McDonald* (Sup.), 148 S. W. 287.

See Art. 1223. Corporations exempt.

See notes under Art. 3837.

127. Amount of Franchise Tax to Be Paid by Foreign Corporations—How Computed.—Except as herein provided, each and every foreign corporation authorized, or that may hereafter be authorized, to do business in this State shall, on or before the first day of May of each year pay in advance to the Secretary of State a franchise tax for the year following which shall be computed as follows: The total capital stock of such corporation, the total gross receipts of such corporation from all its business and the total gross receipts from the business of such corporation for the calendar year immediately preceding shall be ascertained by the Secretary of State from sworn reports of the officers of such corporation or by such other method as may satisfy the Secretary of State, and the capital stock of such corporation upon which the franchise tax herein provided is based shall be that proportion of the entire authorized capital stock as the gross receipts from the Texas business of such corporation done within the State of Texas bears to the total gross receipts of such corporation from its entire business and the capital stock assignable to the Texas business and upon which the fees hereinafter provided shall be calculated and based being thus ascertained, the franchise tax which is hereby provided shall be computed as follows: \$1.00 on each \$1,000.00 or fractional part thereof up to and including \$100,000.00; \$2.00 on each \$5,000.00 or fractional part thereof in excess of \$100,000.00 and up to and including \$1,000,000.00; \$2.00 on each \$20,000.00 or fractional part thereof in excess of \$1,000,000.00 and up to and including \$10,000,000.00 and \$2.00 on each \$50,000.00 of such stock in excess of \$10,000,000.00; provided, however, that where such corporation has a surplus or undivided profits the same shall be added to the entire capital stock of such corporation and shall be taken and computed as a part thereof in determining the amount of such entire capital stock; provided, that where a foreign corporation applying for a permit has theretofore done no business in Texas the franchise tax herein provided shall not be payable until the end of one year from

the date of such permit at which time the franchise tax shall be computed upon that proportion of the entire capital stock ascertained as above required as the receipts from its Texas business bears to the receipts of the corporation from its entire business for the same period; and the second payment of such franchise tax shall be made for the period intervening between the date of such first payment and the first day of May following, the proportion of capital stock upon which the same shall be computed to be the same proportion that the receipts from the Texas business for such period bears to the receipts of the corporation from its entire business for the same period, and that thereafter such franchise tax shall be payable annually on the first day of May for the year succeeding computed upon that proportion of the entire capital stock of such corporation which the receipts from the Texas business of such corporation bears to its entire receipts for the calendar year preceding as herein above provided. [Acts 35th Leg. 1917; R. S. Art. 7394, as amended Acts 1917.]

A franchise tax, imposed by a State on a foreign corporation, held not a property tax, but a mere license or privilege to do business within the State. *Gaar, Scott & Co. v. Shannon*, 52 C. A. 634, 115 S. W. 361.

A provision in a charter of a corporation, fixing a specified sum as taxes, held not a contract that no greater tax shall not be laid, within the Constitution forbidding laws impairing the obligations of contracts. *Gaar, Scott & Co. v. Shannon*, 52 C. A. 634, 115 S. W. 361.

Acts 1905, chs. 19, 72, re-enacted with modifications in 1907 and embodied in this chapter, impose a like tax on all foreign corporations and do not discriminate in favor of domestic corporations subject to a less tax. The law is constitutional. *Id.*

128. Part of Annual Tax to Be Paid in Certain Instances.—Whenever a private domestic corporation is chartered in this State, and whenever a foreign corporation is authorized to do business in this State, and such corporation shall be required to pay in advance to the Secretary of State, as its franchise tax from that time down to and including the thirtieth day of April next following, only such proportionate part of its annual franchise tax, as hereinabove prescribed, as the period of time between the date of filing of its articles of incorporation or the issuance of its permit to do business, as the case may be, and on the first day of May next following, bears to a calendar year. [R. S. Art. 7395.]

129. Officers May Be Required to Make Affidavit to Facts.—For the purpose of determining the amount of the first franchise tax payment required by this chapter of any domestic corporation which may be hereafter chartered, or of any foreign corporation which may hereafter apply for a permit to do business within this State,

and also for the purpose of determining the correctness of any report which is provided for in this chapter, the Secretary of State may, whenever he may deem it necessary or proper to protect the interests of the State, require any one or more of the officers of such corporations to make and file in the office of the Secretary of State an affidavit or affidavits in writing, which shall be subscribed by such officer, and by him sworn to before some officer who is by law duly authorized to administer oaths, and verified by his seal of office, setting forth fully the facts concerning the amount of the surplus and undivided profits, respectively, if any, of such domestic or foreign corporation; and until the Secretary of State shall be fully satisfied as to the amount of such surplus and undivided profits, respectively, if any, he shall not file the articles of incorporation of such proposed domestic corporation, or issue such permit or accept such franchise tax. [R. S. Art. 7396.]

130. How Amount of Franchise Tax May Be Determined.—For the purpose of ascertaining and determining the amount of any annual franchise tax prescribed by this chapter, excepting only the first tax to be paid by any domestic corporation which may hereafter be chartered, or of any foreign corporation which may hereafter be authorized to do business in this State, the president, vice-president, general manager, secretary, treasurer and superintendent of each and every domestic or foreign corporation embraced within the provisions of this chapter, shall annually and between the first and tenth days of March, and also whenever called upon by the Secretary of State, to do so, report to the Secretary of State, in writing, and under oath, as required by the preceding article, the total amounts of the capital stock issued and outstanding, and the surplus and undivided profits, respectively, if any, of such corporation on the first day of March next preceding; and the Secretary of State may ascertain such facts from other sources; and, if the true aggregate of such amounts shall exceed the authorized capital stock of such corporation as disclosed by its then current original or amended articles of incorporation, the amount of its annual franchise tax for the year beginning the first day of May next thereafter shall be thereon collected and paid; otherwise, its annual franchise tax shall be calculated and paid upon the amount of its authorized capital stock as shown by its aforesaid original or amended articles of incorporation. The making and filing by any one of such officers of such corporation of the record required by this article shall relieve the other officers of such corporation from the duty of making any report required by this article,

except such report or reports as may be required by the Secretary of State. [R. S. Art. 7397.]

This article is superseded in part by Secs. 131 to 135 inclusive.

131. Certain Reports to Be Filed as Basis of Amount of Tax Due.—All corporations that are now required by law to pay an annual franchise tax, shall, between the first day of January and the first day of February of each and every year, be required to make a report to the Secretary of State, on blanks furnished by him, which report shall give the authorized capital stock of the corporation, the capital stock issued and outstanding, the surplus and undivided profits of the corporation, the names and addresses of all the officers and directors of the corporation, the amount of mortgages, bonded or other indebtedness of each corporation, and the amount of the last annual, semi-annual or quarterly dividend. If the capital stock issued and outstanding plus the surplus and undivided profits shall exceed the authorized capital stock, the franchise tax shall be based on this amount instead of the authorized capital, but if it shall be less, then the franchise tax shall be based on the amount of capital stock, but no corporation shall be required to pay a greater rate of franchise tax by reason of its having a surplus than a corporation that has no surplus. [Acts 1913, p. 327, Sec. 1, Art. 7397a.]

132. Corporations Subject to Fine as Penalty.—Any corporation which shall fail or refuse to make the report as provided in Section 1 hereof (Art. 7397a), shall be subject to a fine of ten dollars for each and every day after the first day of February that they shall fail to make such report. The Attorney General of this State is hereby empowered and directed to bring suit against such corporation in either of the district courts of Travis County, in the name of the State of Texas for the collection of such penalties that may be due by reason of such failure. [Acts 1913, p. 327, Sec. 2, Art. 7397b.]

133. Such Reports to Be Treated as Privileged.—The reports required by this Act shall be deemed to be privileged and not for the inspection of the general public, but any party or parties who are interested in the subject matter of any report, may, upon valid request in writing made to the Secretary of State, secure a copy of same. [Acts 1913, p. 327, Sec. 3, Art. 2397c.]

134. May Be Made by What Officers; How Executed, Etc.—The following officers of each and every corporation shall be deemed competent to make the report required by this Act: The president, vice-president, secretary, treasurer or general manager, and all

reports provided for in this Act shall be signed officially and sworn to before some officer authorized by law to administer oaths. [Acts 1913, p. 327, Sec. 4, Art. 7397d.]

135. Laws in Conflict Are Repealed. All laws and parts of laws in conflict with this Act are hereby repealed, but where this Act is not in conflict with any existing law, it shall be held to be amendatory thereof. [Acts 1913, p. 327, Sec. 5, Art. 7397e.]

NOTE.—The Secretary of State has held that the failure to make reports promptly as provided in Sections 131 to 135, inclusive, is directory only, as to the time in which they shall be made.

136. Increase in Capital Stock—Supplemental Tax to Be Paid.—In the event of increase in the authorized capital stock of any domestic or foreign corporation, it shall also pay in advance a supplemental franchise tax thereon for the remainder of the year down to and including the thirtieth day of April next thereafter, the amount of which shall be determined as is provided in Article 7395 in case of the first franchise tax payment to be made under this chapter by a domestic corporation which may be hereafter authorized to do business within this State. [R. S. Art. 7398.]

137. Charter May Be Forfeited for Failure to Pay Tax.—Any corporation, either domestic or foreign, which shall fail to pay any franchise tax provided for in this chapter when the same shall become due and payable under the provisions of this chapter, shall thereupon become liable to a penalty of twenty-five per cent of the amount of such franchise tax due by such corporation; and, if the amount of such tax and penalty be not paid in full on or before the first day of July thereafter, such corporation shall for such default forfeit its right to do business in this State; which forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation, the words, "Right to do business forfeited," and the date of such forfeiture; and any corporation whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any other courts of this State, except in a suit to forfeit the charter of such corporation; and, in any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation, unless its right to do business in this State shall be revived as provided by this chapter. And each and every director and officer of any corporation whose right to do business within this State shall be so forfeited shall, as to any and all debts of such corporation which may be created or incurred, with his knowledge, approval and

consent, within this State, after such forfeiture by any such directors or officers, and before the revival of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such directors and officers of such corporation were partners. [R. S. Art. 7399.]

The failure of a corporation to pay the franchise tax mentioned in the article prior to its amendments embodied in this article does not authorize the Secretary of State to declare forfeiture of its charter, but its dissolution can only be effected by a suit brought by the State for that purpose. *Rippstein v. Haynes Medina Valley Ry. Co.* (Civ. App.), 85 S. W. 314.

A director of a corporation, the franchise of which had been forfeited for failure to pay the franchise tax, could not be made individually liable on an account for goods sold to the corporation, where plaintiff's petition did not specially plead the facts showing such forfeiture and personal liability under this article. *Smith v. Briggs-Weaver Machinery Co.* (Civ. App.), 132 S. W. 954.

As the common-law right to defend should not be denied except upon the clearest necessity, the inhibition in this article against affirmative relief would be construed as implying that defensive relief might be granted, so that, in an action upon bills of exchange against a corporation whose right to do business has been forfeited, it could be heard upon the plea of non est factum and other purely defensive relief. *Maloney Mercantile Co. v. Johnson County Savings Bank*, 56 C. A. 397, 121 S. W. 889.

That a corporation's right to do business has been forfeited for failure to pay franchise as required by this article did not destroy its corporate existence, though it assigned its assets, and ceased to do business. *Id.*

Where, at a time a corporation was sued, it had not failed to pay its franchise tax, a condition precedent to its right to do business in the State, it would not be deprived of the right to defend the action by afterwards failing to pay such tax. *J. T. Stark Grain Co. v. Harry Bros. Co.*, 57 C. A. 529, 122 S. W. 947.

Under this article as originally enacted in 1897 an entry by the Secretary in his ledger: "Penalty notice returned. Charter forfeited for 1895 tax. Charter filed March 17, 1890," is sufficient to forfeit the corporation's right to sue. *Harvey v. Provident Inv. Co.* (Civ. App.), 156 S. W. 1127.

The certificate of the clerk is prima facie evidence of the right of a witness to fees and mileage as stated therein. *Flores v. Thorn*, 8 Tex. 337; *Gause v. Edminston*, 35 Tex. 69.

A certificate as to effect of ancient records is incompetent as evidence. *Howard v. Russell*, 75 Tex. 171, 12 S. W. 525.

Ex parte certificate of the clerk that no claims had been filed against an estate in course of administration is not evidence. *Myers v. Jones*, 23 S. W. 562, 4 C. A. 330.

The indefiniteness of the description of the property in an assessment certificate does not necessarily make it void or inadmissible. *Hutcheson v. Storrie* (Civ. App.), 48 S. W. 785.

In an action to recover land awarded to defendant as additional school land, the land commissioner's certificate of proof of defendant's settlement on his home section held not admissible as against plaintiff. *White v. Watson*, 34 C. A. 169, 78 S. W. 237.

A clerk's certificate on a will after probate held sufficient to show that it was duly recorded, as required by Acts 1848, p. 236, c. 157. *Hymer v. Holyfield* (Civ. App.), 87 S. W. 722.

The certificate of the Secretary of State, declaring that the right of a foreign corporation to do business in the State has been forfeited, is not admissible to prove a forfeiture. *St. Louis E. M. Fireproof Co. v. Beilharz* (Civ. App.), 88 S. W. 512.

In an action to set aside deeds executed by a married woman, the certificate of the notary of her acknowledgment is not competent as testimony to show that she knew what land was covered by the deed. *Ora v. Davis*, 105 Tex. 479, 151 S. W. 794, affirming judgment (Civ. App.), 135 S. W. 710.

138. Duty of Secretary of State to Give Notice Before Forfeiture.—The Secretary of State shall, during the month of May of each year, notify each domestic and foreign corporation which may be or become subject to a franchise tax under any law of this State, which has failed to pay such franchise tax on or before the first day of May, that unless such overdue tax together with said penalty thereon shall be paid on or before the first day of July next following, the right of such corporation to do business in this State will be forfeited without judicial ascertainment. Such notice may be either written or printed and shall be verified by the seal of the office of the Secretary of State, and shall be addressed to such corporation and mailed to the postoffice named in its articles of incorporation as its principal place of business, or to any other known place of business of such corporation; and a record of the date of mailing such notice shall be kept by the Secretary of State. Such notice and said record thereof shall constitute legal and sufficient notice thereof for all the purposes of this chapter. Any corporation whose right to do business may have been forfeited, as provided in this chapter, shall be relieved from such forfeiture by paying the Secretary of State any time within six months after such forfeiture the full amount of the franchise tax and penalty due by it, together with an additional amount of five per cent of such tax for each month, or fractional part of a month, which shall elapse after such forfeiture; provided, that such amount shall in no case be less than five dollars. When such tax and all such penalties shall be fully paid to the Secretary of State, he shall revive and reinstate the right of the corporation to do business within this State by cancelling the words, "Right to do business forfeited," upon his record and endorsing thereon the word, "Revived," and the date of such revival. If any domestic corporation whose right to do business within this State shall hereafter be forfeited under the provisions of this chapter, shall fail to pay the Secretary of State, on or before the first day of January next following the revival, amounts necessary to en-

title it to have its right to do business revived under the provisions of this chapter, such failure shall constitute sufficient grounds for the forfeiture, by judgment of any court of competent jurisdiction, of the charter of such domestic corporation. [R. S. Art. 7400.]

NOTE.—As to parties entitled to forfeiture, see notes under Section 143.

139. Cancellation of Forfeiture in Certain Cases; Forfeiture by Judgment, When, Etc.—Every private corporation heretofore chartered under the laws of this State, whose charter or right to do business, and every foreign corporation whose right to do business within this State has heretofore been forfeited as provided by law, solely and only because of its failure to pay, within the time provided by law any franchise tax or taxes and penalty or penalties prescribed by law for failure to pay such tax or taxes when due, shall be permitted and authorized to pay to the Secretary of the State on or before the first day of September, A. D. 1913, the aggregate amount of its franchise tax or taxes and the penalty or penalties thereon as provided by law, calculated for the entire period of time beginning with the day upon which the first unpaid franchise tax payment became due and ending with the day of such payment; and upon such payment being made to the Secretary of State, he shall cancel such previous forfeiture of the right of such corporation to do business within this State and shall endorse upon the margin of the record kept in his office relating to such corporation the word "Revived," and the date of such revival. Failure of any such domestic corporation to pay such aggregate amount on or before the first day of September, A. D. 1913, shall constitute sufficient grounds for the forfeiture by a judgment of any court of competent jurisdiction of the charter of such domestic corporation; provided, that none of the provisions of this section shall apply to any corporation whose right to do business within this State, or whose charter may have been legally forfeited for any other reason than that of failure to pay such franchise tax or taxes and such penalty or penalties.

Provided, that this Act shall not in any manner affect any litigation by or against any corporation which cause of action or defense to any cause of action originated since the forfeiture of the charter or cancellation or permit, and prior to the time of taking advantage of this Act. [Acts 1907, 1st Ex. Sess., ch. 23, Sec. 10. Amended Acts 1911, p. 91, Sec. 1. Acts 1913, p. 334, Sec. 1.]

140. Foreign Corporations May Surrender Permit and Withdraw From State.—Should any foreign corporation which may have or hereafter obtain a permit to do business within this State desire

at any time to withdraw from doing business in this State, it may surrender such permit to the Secretary of State, who shall thereupon mark or stamp such permit, "Surrendered," dating and signing same officially, and shall endorse upon the record of such permit in his office the word, "Surrendered," and the date thereof; and thereafter such corporation may, by complying with the provisions of this chapter, secure a new permit to do business in this State without having made any further payment of franchise tax under such old permit. [R. S. Art. 7401.]

141. Penalty for Corporation Continuing Business After Forfeiture of Charter.—In any and all cases in which the charter, or right to do business, of any private domestic corporation, heretofore or hereafter chartered under the laws of this State, or the permit of any foreign corporation, or its right to do business within this State, shall have been or shall hereafter be forfeited, it shall be unlawful for any person or persons who were or shall be stockholders, or officers, of such corporation at the time of such forfeiture to do business within this State, in or under the corporate name of such corporation, or to use signs or advertisements of such corporation or similar to the signs or advertisements which were used by such corporation before such forfeiture; and each and every person who may violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in the Penal Code; provided, the inhibition and penalties prescribed by this article shall not apply where the right of such corporation to do business within this State has been revived in the manner provided by law and is at the time in good standing. [R. S. Art. 7402.]

142. Gross Receipts Tax Payers Exempt From Paying for Franchise.—The franchise tax imposed by this chapter shall not apply to any insurance company, surety, guaranty or fidelity company, or any transportation company, or any sleeping, palace car and dining car company which now is required to pay an annual tax measured by their gross receipts, or to corporations having no capital stock and organized for the exclusive purpose of promoting the public interest of any city or town, or to corporations organized for the purpose of religious worship or for providing places of burial not for private profit or corporations organized for the purpose of holding agricultural fairs and encouraging agricultural pursuits, or for strictly educational purposes, or for purely public charity. [R. S. Art. 7403.]

Interurban companies chartered under Subdivision 60, Article 1121, Acts 1911, are transportation companies, and required to pay an annual tax

measured by their gross receipts, and are exempt from the franchise tax imposed by Chapter 3, Title 126, Article 7403, Acts 1911. Ruling of Attorney General, p. 661, 1912-14.

143. Duty of Attorney General to Bring Suit.—The Attorney General shall be authorized, and it shall be his duty, to bring suit therefor against any and all such corporations which may be or become subject to or liable for any and all franchise tax or taxes or penalties under this or any former law; and, in case there may now be or shall hereafter exist valid grounds for the forfeiture of the charter of any domestic private corporation, or failure to pay any franchise tax or franchise taxes or penalty or penalties to which it may have become or shall hereafter be or become subject or liable under this or former law, it shall be his duty to bring suit for a forfeiture of such charter; and, for the purpose of enforcing the provisions of this chapter by civil suits, venue is hereby conferred upon the courts of Travis County concurrently with the courts of the county in which the principal office of such corporation may be located as shown by its articles or amended articles of incorporation. Such courts shall also have authority to restrain and enjoin a violation of any and all of the provisions of this chapter. In any and all cases in which any court having jurisdiction thereof shall make and enter judgment forfeiting the charter of any such corporation, the court may appoint a receiver thereof and may administer such receivership under the laws regulating receiverships. [R. S. Art. 7404.]

A proceeding for judgment of ouster from corporate franchise, dissolution of a corporation, for unpaid franchise taxes and penalties, and for the receiver to wind up the corporation is not maintainable under Art. 6398, but must be had under this article. *Oriental Oil Co. v. State* (Civ. App.), 135 S. W. 722.

Under this article and Arts. 7400, 7401, the authority of the Attorney General is exclusive, and a suit instituted by a county attorney is illegal. *Oriental Oil Co. v. State* (Civ. App.), 135 S. W. 722.

144. Duty of District Clerk When Charter Is Forfeited.—Upon the rendition by the district court of any judgment or forfeiture under the provisions of this chapter, the clerk of that court shall forthwith mail to the Secretary of State a certified copy of such judgment; and, upon receipt thereof, he shall endorse upon the record of such charter in his office the words, "Judgment of forfeiture," and date of such judgment. In event of an appeal from such judgment by writ of error or otherwise, the clerk of the court from which such appeal is taken shall forthwith certify to the Secretary of State the fact that such appeal has been perfected, and he shall endorse upon the record of such charter in his office the

word, "Appealed," and the date upon which such appeal was perfected. When final disposition of such appeal shall be made, the clerk of the court making such disposition thereof shall forthwith certify such disposition and the date thereof to the Secretary of State, who shall briefly note same upon the record of such charter in his office and the date of such final disposition. [R. S. Art. 7405.]

A proceeding for ouster and unpaid franchise taxes must be had under Art. 7404, and not under Art. 6398; and hence, as this article contemplates review of the judgment by writ of error, a motion to dismiss the writ to the judgment, because proceedings under Art. 6398 were reviewable only by appeal, must be denied. *Oriental Oil Co. v. State* (Civ. App.), 135 S. W. 722:

Even if the proceedings for ouster and for delinquent franchise taxes be construed to be both under Art. 6398 and under Art. 7404, the writ of error would stand as to everything in the judgment, except the naked item of the ouster. *Id.*

145. Payment of Tax by Corporations in Process of Liquidation.—In case a corporation is actually in process of liquidation, such corporation shall only be required to pay a franchise tax calculated upon the difference between the amount of stock actually issued and the amount of liquidating dividends actually paid upon such stock; provided, that the president and secretary of such corporation shall make affidavit as to the total amount of capital stock issued and as to the amount of liquidating dividends actually paid and that such corporation is in an actual bona fide state of liquidation. [R. S. Art. 7406.]

Under former laws a foreign corporation paying a franchise tax under protest, on the ground of the illegality of the statute imposing the tax, held not entitled to recover the same, on the ground that it was only doing an interstate business, and was not subject to the franchise tax. *Gaar, Scott & Co. v. Shannon*, 52 C. A. 634, 115 S. W. 361.

CHAPTER VII.

TAXES ON INTANGIBLE ASSETS—DUTIES OF STATE TAX BOARD AND COMMISSIONER.

(From Chapter 4, Title 126, R. S.)

	SEC.		SEC.
Creation of State Tax Board and Appointment of Tax Commissioner	146	mand Additional Statements..	156
Tax Commissioner to Execute Bond	147	Statements to Be Placed Before Board, When	157
Secretary of Board May Be Employed	148	Duties and Powers of Board in Passing Upon Statement.....	158
Duties of State Tax Board Defined	149	Method of Arriving at Intangible Values of Properties.....	159
Board or Member to Visit Counties	150	Unincorporated Companies and Individuals; Capital, How Ascertained	160
Powers of Members of Board to Administer Oaths, etc.	151	Board to Certify Amount of Intangible Assets to County Assessors	161
Penalty for Failure to Obey Subpoena of Board.....	152	Failure of Tax Assessor to Comply; Penalty	162
Taxes on Intangible Assets of Certain Corporations	153	Failure to Make Statement, etc.; Penalty	163
Such Corporations or Persons to Furnish Statement	154	Receivers and Trustees in Bankruptcy to Make Reports, etc.....	164
What Statements in Sec. 154 Shall Contain	155	Persons Complying With This Chapter Relieved of Other Taxes	165
Date of Receipt to Be Endorsed on Statement; Board May De-			

146. Creation of State Tax Board and Appointment of Tax Commissioner.—There is hereby created a State Tax Board, which shall be composed of the Comptroller of Public Accounts, the Secretary of State and a third member, to be known as Tax Commissioner of the State of Texas. Except as herein otherwise provided, such Tax Commissioner shall be appointed by the Governor in accordance with and subject to the provisions of Section 12 of Article 4 of the Constitution of Texas, and shall hold his office for two years and until his successor shall be appointed and qualified, and shall receive an annual salary of two thousand five hundred dollars, in equal installments payable at the end of each month. A majority of said Board shall constitute a quorum to do business. A record of the proceedings of said board shall be kept at the State capitol, and shall be open to the inspection of the public. [R. S. Art. 7407, Acts 1909, p. 469.]

Acts, 1905, c. 146, p. 351, re-enacted with modifications and additions and embodied in this chapter, is not unconstitutional, and an injunction will

not lie to restrain the State Tax Board from exercising or attempting to exercise any of the powers or functions conferred on them by the Act. *Missouri, K. & T. Ry. Co. v. Shannon*, 100 Tex. 379, 100 S. W. 138, 10 L. R. A. (N. S.) 681, affirming (Civ. App.), 97 S. W. 527.

This Act, Acts 1907, c. 17, embodied in this chapter, is not repugnant to or violative of Article 8, Sections 11, 14, of the State Constitution. *Lively v. M. K. & T. Ry. Co.*, 102 Tex. 545, 120 S. W. 852.

147. Tax Commissioner to Execute Bond.—Before the Tax Commissioner shall enter upon or proceed with the discharge of his official duties, he shall execute a bond payable to the State of Texas, at Austin, in Travis County, Texas, in the sum of ten thousand dollars, with two or more good and sufficient sureties, to be approved by the Governor, conditioned for the faithful discharge of his official duties as such Tax Commissioner, and shall take and subscribe the oath of office prescribed by the Constitution of this State, which bond and oath shall be filed in the office of the Secretary of State. [R. S. Art. 7408.]

148. Secretary of Board May Be Employed.—The State [Tax] Board may employ for not more than four months in each year a secretary, who shall be an expert stenographer, and who shall receive for his services as secretary and stenographer a salary of one hundred dollars per month. [R. S. Art. 7409.]

149. Duties of State Tax Board Defined.—It shall be the duty of said Tax Board—

(a) To make such rules and regulations as said board shall deem proper with respect to its own meetings and procedure, and to effectually carry out the purposes for which said board is constituted.

(b) To examine all books, papers and accounts and to interrogate under oath, or otherwise, any and all persons whom said board, or any member thereof, may desire to examine for the purpose of obtaining or acquiring any and all information that may in any manner aid in securing a compliance with any tax law or revenue law of this State by any and all persons, companies, corporations or associations liable to taxation or to pay any license fee under any law of this State, which is now in force, or which may hereafter be enacted.

(c) To make diligent investigation and inquiry concerning the revenue laws and systems of other States and countries, so far as the same are made known by published reports, or statistics, or can be ascertained by correspondence with officers thereof; and, with the aid of information thus or otherwise obtained, together with experience and observation of the operation of the laws of this State, to recommend to the Legislature at each regular session

thereof, such amendments, changes or modifications of the laws of this State, and such additional laws as may to said board, or any member thereof, seem necessary or proper to remedy injustice or irregularity in taxation, and to facilitate the assessment of taxes and collection of public revenues.

(d) To report to the Legislature, at each regular session thereof, the whole amount of State revenues collected in this State for all purposes, and the sources thereof, the amount of such revenues which may be lost to the State through failure to make collection and the cause of such losses, a summary of the proceedings of said board since the date of its last report, and such other matters concerning the public revenues as said board, or any member thereof, may deem to be of public interest. [R. S. Art. 7410.]

150. Board or Member to Visit Counties.—Said Tax Board, or any member thereof, or the State Revenue Agent under the direction of said board or of the Governor of Texas, shall, at least once in each year, visit such counties of the State as said board, or the said Governor, may direct, for the purpose of investigating into and aiding in the enforcement of all revenue laws of this State, and especially those concerning the rendition, assessment and collection of Taxes. [R. S. Art. 7411.]

151. Powers of Members of Board to Administer Oaths, Etc.—Each member of said State Tax Board shall have power to administer oaths and to subpoena and examine witnesses, and to issue subpoenas duces tecum, and shall have access to and power to order the production before such board, or any member thereof, of any and all books, documents and papers which may be in the possession or under the control of any person, company, corporation or receiver, assignee, trustee in bankruptcy, or bailee, whenever such board, or any member thereof, may consider same necessary or proper in the prosecution of any injury [inquiry] under or in the execution of any provision of this chapter; and all such process shall be served under the provisions of law governing the service of process in civil cases, in so far as applicable. [R. S. Art. 7412.]

152. Penalty for Failure to Obey Subpoena of Board.—Any person who shall disobey any such subpoena, or subpoena duces tecum, issued by any member of said board, or any such order of said board, or who shall fail or refuse to attend as by such subpoena directed, or to testify when so required to do so by any member of said board, under the provisions of this chapter, shall be deemed guilty of contempt, and may be punished therefor by said board under the provisions of laws applicable to the district courts in such cases. [R. S. Art. 7413.]

153. Taxes on Intangible Assets of Certain Corporations.—Each and every incorporated railroad company, ferry company, bridge company, turn-pike or toll company, doing business wholly or in part within the State of Texas, whether incorporated under the laws of this State, or of any other state, territory, or foreign country, and every other individual, company, corporation or association doing business of the same character in this State, in addition to the ad valorem taxes on intangible properties which are or may be imposed upon them, respectively, by law, shall pay an annual tax to the State, beginning with the first day of January of each year, on their intangible assets and property, and local taxes thereon to the counties in which its business is carried on; which additional tax shall be assessed and levied upon such intangible assets and property in the manner provided in this chapter. The county or counties in which such taxes are to be paid, and the manner of the apportionment of the same, shall be determined in accordance with the provisions of this chapter. [R. S. Art. 7414.]

Intangible assets of a railroad company must be assessed at the same uniform rate as all other property in the county, in this case (Dallas County) at 66-2/3 cents on the dollar. *Lively v. M. K. & T. Ry. Co.* 102 Tex. 545, 120 S. W. 852.

It is not necessary for a railroad company to apply to the board of equalization of the county for relief in the matter of assessing its intangible assets, because that board has no power to grant such relief. *Lively v. M. K. & T. Ry.*, 102 Tex. 545, 120 S. W. 852.

Injunction by a railroad to restrain the collection of taxes, evidence was sufficient to show the assessment against it was based upon full value of the property that on other property was based on a third of its value. *Chicago, R. I. & G. Ry. v. Ratliff*, (T. C. A.), 177 S. W. 571.

The State may exercise its sovereign power to levy and collect taxes only on condition that they be used for general purposes. *Waples v. Marrest* (Sup.), 184 S. W. 180.

154. Such Corporations or Persons to Furnish Statements.—Between the second day of January and the first day of March of each year, every individual, company, corporation and association embraced within the provisions of the next preceding article of this chapter, or coming within its scope and intent, shall make out and deliver into the possession of said Tax Commissioner a statement containing the information required of it by this chapter, which statement shall be duly verified by the affidavit of the individual, or one of the officers of the company, corporation or association in whose behalf it is made, or by the receiver, assignee, or trustee in bankruptcy thereof. [R. S. Art. 7415.]

155. What Statements in Section 154 Shall Contain.—Each such

statement shall show the following items and particulars as the same stood on the first day of January next preceding, to-wit:

(a) The name of the individual, company, corporation, or association making such statement, and the character of its business.

(b) If incorporated, the authority by which it was incorporated and the purposes of its incorporation as expressed in its original or amended articles of incorporation or articles of association.

(c) The locality of its principal office and the amount and kind of business done by it in this State and the total gross receipts derived from its business within this State, including a due proportion of its interstate business, if it has done any business of that character.

(d) Its total authorized capital stock and the number of shares thereof which have been issued and are outstanding, and the par face value of each such share, and the amount of the capital actually employed in the aforesaid business within the State.

(e) The market value of said shares of stock, or, if they have no market value, the actual value thereof.

(f) The assessed value and also the true value of all the tangible property owned by such individual, company, corporation or association in each county in this State and the total assessed value and also the true value thereof.

(g) The assessed value and also the true value of the tangible property of such individual, company, corporation or association, outside of this State, and not specifically used in the business of such individual, company, corporation or association, same to be given by States, and the total assessed value and also the true value of the same.

(h) A statement of each and every existing lien, mortgage or other charge upon the whole, or any part, of the property of such individual, company, corporation or association, and of the property thereby charged or encumbered, and of the amount of unpaid debt secured by each such mortgage, lien or charge, and of the interest charged thereon, and to what extent such interest has been paid, and of the true and fair market value of every such debt.

(i) A statement of the gross receipts and net income and earnings for the next preceding twelve months, including therein all interest on investments, and all rents, fruits, revenues and receipts from every source whatsoever, and a statement of the income used for repairs, and of the amounts used for betterments, and the amount used for extensions within that period of time.

(j) Every such railroad company shall also show in each statement made by it:

1. The total length of all lines of said company, whether within or without this State.

2. The total length of such lines as are within the State.

3. The length of its lines in each of the counties in this State into which its lines extend. [R. S. Art. 7416.]

156. Date of Receipt to Be Endorsed on Statement; Board May Demand Additional Statements.—The Tax Commissioner shall receive all tax statements rendered to him under the provisions of this chapter, and shall endorse upon each the date of receipt thereof, signing such endorsement officially. Said State Tax Board shall examine all such statements as soon as may be practicable; and, if said board shall deem any of them insufficient, or shall believe other or further information necessary or proper, said board shall at once demand of such individual, company or corporation, or association, such additional statements and such further information as it may think proper. [R. S. Art. 7417.]

157. Statements to Be Placed Before Board, When.—On the first Monday after the first day of March of each year, or as soon thereafter as may be practicable, said Tax Commissioner shall place before said State Tax Board all such statements, facts and information as may have come into its possession or knowledge under the provisions of this chapter. [R. S. Art. 7418.]

158. Duties and Powers of Board in Passing Upon Statement.—Said State Tax Board shall thereupon carefully examine and consider the said statements, facts and information; and, if they deem it advisable to do so, shall hear evidence, and shall require such individual, company, corporation or association to make such additional reports, if any, as such board may deem proper, and shall otherwise secure further additional information so far as may be in their power, to show the true value of the properties aforesaid, and the true value of that portion of every such property which is situated within the State and within the respective counties thereof, sufficient to enable said board to make the preliminary estimate herein provided for; and, for that purpose as well as for the purpose of carrying into effect any and all the provisions of this chapter, said board, and each member thereof, may require and compel, as provided in this chapter, any and all such individuals, companies, corporations and associations, and the officers and agents thereof, and such receivers, trustees in bankruptcy, assignees and bailees, to appear before such board at a time or times to be designated by said board, with any and all such books, papers, documents and information as said board may require, and to submit themselves to examination by said board. Upon consideration of such statements

and information and such additional evidence, books, papers, documents and information, if any, said State Tax Board shall make in accordance with the provisions of this chapter, a preliminary estimate, valuation and apportionment of the true value of the intangible property within this State, of each of said individuals, companies, corporations, or associations, and shall, on or before the thirty-first day of May of each year, by registered mail, notify each and every such individual, company, corporation, or association, receiver or assignee, trustee in bankruptcy, or other person holding such property for the benefit of creditors, of such preliminary estimate, valuation and apportionment, and the amounts thereof; and all such individuals, companies, corporations, associations, receivers, assignees, trustees and other persons shall have fifteen days from the time of mailing such notice by registered mail to appear before such State Tax Board, at Austin, in Travis County, Texas, on a date to be fixed in such notice, and request of such board a change or changes in such valuation and apportionment, or either, or a cancellation of such valuation and apportionment; and said individuals, companies, corporations, associations, receivers, assignees, trustees and other persons may appear before such board, in person or by attorney, or in person and by attorney, and introduce evidence. Said board may, upon its own motion, or upon the written request of any interested party, and each member of said board may summon, swear and examine witnesses under the same rules which govern the summoning, swearing and examination of witnesses in the district courts of this State; and such board shall have the same jurisdiction, authority and power, under the same penalties, to require the production and to secure the examination of any and all books, documents and papers of such individuals, companies, corporations and associations, receivers, assignees, trustees and other persons as is now or may hereafter be conferred by the laws of this State upon the Railroad Commission of Texas. Upon or after such hearing, said board may change such valuation and apportionment, or either, or cancel such valuation and apportionment, as said board may deem just and proper in the premises. [R. S. Art. 7419.]

159. Method of Arriving at Intangible Values of Properties.—In so far as the other evidence and information adduced before said State Tax Board does not make it appear to the members of said board to be improper or unjust to do so, said board shall, in fixing the true value of the entire property of such individual, company, corporation or association embraced within the provisions of this chapter, take as a basis therefor the aggregate market or true value of all its shares of stock, adding thereto the aggregate market or

true value of all indebtedness secured by any mortgage, lien or other charge upon its property or assets, and the sum so produced shall be deemed and treated as the true value of said entire property. And where the individual, company, corporation or association does business and has property, both within this State and outside of it, in ascertaining the true value of its property within this State, said Tax Board shall next ascertain from said statements, reports and evidence, if any, or otherwise, the true value, in the locality where the same is situated, of each such several pieces of real estate situated outside of this State, and of its other properties, if any, outside thereof, and not specifically used in the business of said individual, company, corporation or association, and the aggregate of said value shall be deducted from the gross value of the property as above ascertained; and the result of said deduction and the sum or value thereby obtained shall be deemed and treated as the true value of all property of such individual, company, corporation or association in actual use in its business. Said Tax Board shall then fix the true value of the property of such individual, company, corporation or association within this State, using as a basis and being guided so far as it shall not believe it unjust to do so, by the proportion which it finds to exist between the total lines or total receipts within this State and outside of it, and lines controlled or operated, or the receipts obtained, entirely within this State, so that there shall be apportioned to this State, as the true value of the property within its borders of each individual, company, corporation and association doing business within and outside of its limits, such proportion of the true value of all the property of such individual, company, corporation or association, which is specifically used in its business, as is borne by its total lines or total receipts within this State when compared with the total lines or total receipts both inside and outside of the State of Texas. From the entire value of the property within this State, when ascertained as directed by this chapter, said State Tax Board shall deduct the true value of all the tangible property of such individual, company, corporation or association within this State, as so ascertained by said State Tax Board, and the residue and remainder of value shall be by said State Tax Board fixed, determined and declared as the true value of the intangible properties owned and held by such individual, company, corporation or association within this State. Said State Tax Board shall apportion the sum of the said total taxable values within this State to the counties in which such individual, company, corporation or association does business, in proportion to the amount of business done in and the receipts derived from each such county,

except that, in case of a railroad company, the apportionment to each county shall be in proportion to the line or lines of such individual, company, corporation or association therein. In apportioning the value of the aforesaid properties, said State Tax Board shall have the right and it shall be its duty to make use of and consider all evidence which may be put before it and all material facts at its command; and, if it shall believe that some method of calculation other than that specifically prescribed in this chapter is necessary in order to produce just and lawful results, said board shall follow that method of calculation which it believes best calculated, under all circumstances, to bring about a just, fair, equitable and lawful valuation and apportionment of such property. [R. S. Art. 7420.]

160. Unincorporated Companies and Individuals; Capital, How Ascertained.—Whenever any person, or association of persons, not being a corporation, nor having a capital stock, shall engage in this State in any character of business embraced within the provisions of Article 7414, then the capital and property, or the certificate or other evidences of the rights or interests of such persons or association of persons engaged in such business, shall be deemed and treated as the capital stock of such person, or association of persons, for the purpose of taxation, and for all other purposes, under this chapter, and shall be estimated and valued; and the intangible property of such person or association of persons, when ascertained, shall be apportioned, distributed, assessed and taxed under the provisions of this chapter, in like manner as if such person or association of persons were a corporation; and each such person and association of persons shall, annually, within the time and in the manner provided in this chapter, make the statements and reports and furnish and supply the information required by this Act of the aforesaid companies, corporations and associations, and shall be subject in like manner as the aforesaid companies, corporations and associations to all the terms and provisions of this chapter, including penalties. [R. S. Art. 7421.]

161. Board to Certify Amount of Intangible Assets to County Assessors.—Thereafter, and not later than the twentieth day of June of each year, said State Tax Board shall make, in accordance with the provisions and requirements of this chapter, a final valuation and apportionment of the intangible assets aforesaid, of each and every such individual, company, corporation and association, and shall, as soon after such twentieth day of June as practicable, certify to the tax assessor of each county in this State to which any portion of such intangible assets of any such individual, company, cor-

poration or association is found by said board to be apportionable for taxation and so apportioned, the amount thereof, as fixed, determined and declared by said board, and thereunto apportioned by said board, together with the name and place of residence or place of business of the owner or owners of the property embraced in such valuation and apportionment; provided, that such final valuation and apportionment of such intangible assets, properly apportionable and apportioned by such State Tax Board to any unorganized county shall be by said board so certified to the tax collector of the county to which such unorganized county is attached for judicial purposes. It shall be the duty of the tax assessor of such county, upon receiving such certificate or certificates of said State Tax Board, to place, set down and list, upon forms prescribed by the Comptroller of Public Accounts for such purpose, upon the tax rolls of his county, and of each unorganized county which is attached to his county for judicial purposes, as the case may be, any and all such intangible assets, at the value so fixed, determined, declared and certified by said State Tax Board. Such county tax assessor shall extend and prorate upon said rolls the State and county taxes upon all such intangible assets in the same manner as taxes upon other property are extended and prorated. Said assessment, valuation and apportionment of such intangible assets so fixed, determined, declared and certified by such State Tax Board shall not be subject to review, modification or change by the tax assessor of such county, nor by the board of equalization of such county; and the State and county taxes thereon shall be collected by the tax collector of such county and accounted for by him in the same manner and under the same penalties as taxes upon other property. All State and county ad valorem taxes upon all intangible property in this State belonging to any individual, company, corporation or association embraced by this chapter, shall be assessed under its provisions and not otherwise; but ad valorem taxes upon all other property of any and all such individuals, companies, corporations and associations shall be assessed as is now or as may hereafter be provided by law. [R. S. Art. 7422.]

162. Failure of Tax Assessor to Comply; Penalty.—Any county tax assessor who shall violate or in any respect fail to comply with any of the provisions of this chapter, and any member of any board of equalization and any county tax assessor who shall modify or change, or vote to modify or change, in any manner whatsoever the finding, valuation or apportionment of any of said intangible assets as so fixed, determined, declared and certified by said State Tax Board, shall be deemed guilty of a misdemeanor, and, upon con-

viction thereof, shall be punished as provided in the Penal Code. [R. S. Art. 7423.]

163. Failure to Make Statement, Etc.; Penalty.—Every individual, company, corporation and association, embraced within the provisions of this chapter, which shall fail to make any return, statement and report provided for by this chapter, within fifteen days after the day on which it is required by this chapter to be made, or to make any additional report or statement, or to furnish any additional information which may be required by said State Tax Board, or any member thereof, under the provisions of this chapter, within fifteen days after the mailing of a registered notice or demand therefor in writing, signed by any member of said board and addressed to such individual, company or corporation or association, at its proper postoffice address or principal place of business, shall forfeit and pay to the State of Texas not more than five thousand dollars, which amount may be recovered by suit which may be brought therefor in behalf of the State by the Attorney General; and venue of such suits is hereby fixed within the County of Travis, in said State; and the courts of said county are hereby vested with jurisdiction of said causes. [R. S. Art. 7424.]

164. Receivers and Trustees in Bankruptcy to Make Reports, Etc.—If the property of any such individual, company, corporation or association shall be in the hands of any receiver, assignee, trustee in bankruptcy, or other person holding under any court, or for the benefit of any creditor or creditors, then the statements, reports, information, books and papers aforesaid shall be furnished by such receiver, assignee, trustee or other person, by some officer or agent acting under him, in the same manner and to the same extent as is hereinbefore provided in cases where an individual, company or association is in possession; and as to such receiver, assignee, trustee in bankruptcy or other person, officer or agent, all of the provisions of this chapter, in so far as they are applicable, shall apply and govern. [R. S. Art. 7425.]

165. Persons Complying With This Chapter Relieved of Other Taxes.—Whenever any individual, company, corporation or association, embraced within Article 7414, shall pay in full, and within the year for which same may be assessed, all its State and county taxes for that year upon all its intangible properties as determined, fixed and assessed under the provisions of this chapter, such individual, company, corporation or association shall thereby be relieved from liability for and from payment of any and all occupation taxes measured by gross receipts for or accruing during that year under any law of this State; but no such individual, company,

corporation or association shall be entitled to any such exemption, except for the year for which it shall, before same shall become delinquent, pay all its aforesaid intangible State and county taxes for that year. [R. S. Art. 7426.]

The Comptroller has no authority to assess for taxation the intangible assets of a railroad company in an unorganized county. Opinion of Attorney General.

A street railway company incorporated for transportation of freight is subject to the provisions of the intangible assets act. Opinion of Attorney General.

A company incorporated under Subdivision 3a of Article 642 of the Revised Statutes is not a "pipe line company" within the meaning of the "Intangible Assets Tax Law," and is not required to make a report under it. Opinion of Attorney General.

A company incorporated for the purpose of establishing and maintaining a lumber company, etc., with the right to purchase, lease, erect and operate all necessary mills, planing mills, dry kilns, tram roads and all other necessary incidents to such business, and which does own and operate a tram railroad is not a railroad or car company. It is a lumber company, and the intangible assets act does not operate upon such companies. Opinion of Attorney General.

The mere fact that a railroad company is not liable for taxes under the Williams bill (Chapter 148, Acts of the Twenty-ninth Legislature) does not relieve it from liability for taxes, penalties and forfeitures under the Love bill (Chapter 141, Acts of the Twenty-ninth Legislature.) In the enactment of those two laws it was the purpose of the Legislature to require every railroad company embraced in said acts, respectively, to pay tax under the one or the other act. In no instance can a railroad which shall not have actually paid its taxes under the Williams bill claim, under it, exemption from liability under the Love bill. Opinion of Attorney General.

The tax on intangible assets and on rolling stocks of railway corporations can be collected by counties only. Such tax cannot be levied and collected by subdivision of counties. Ruling of Attorney General, p. 630, 1912-14.

Railroad company cannot be prevented from tendering and paying into court all taxes not in dispute and involved in the litigation. Ruling of Attorney General, p. 652, 1914-16.

Tax on tangible properties of railway company can be accurately segregated from the tax on its intangible assets. Ruling of Attorney General, p. 652, 1914-16.

Where State should receive or refuse to receive the money when tendered no penalty or interest will accrue. Opinion of Attorney General, p. 652, 1914-16.

This opinion does not waive the rule that tax collectors should not receive and receipt for merely a portion of the taxes assessed against the property of an owner. Opinion of Attorney General, p. 652, 1914-16.

CHAPTER VIII.

TAXES ON LIQUOR DEALERS—REGULATIONS OF DEALERS AND FORFEITURES OF LICENSE IN CERTAIN INSTANCES.

(From Chapter 5, Title 126, R. S.)

	SEC.		SEC.
Amount of Tax to Be Collected from Liquor Dealers.....	166	Petition for License—Requisites of	185
Definition of a "Retail Liquor Dealer"	167	License Not to Be Granted for Business Within Three Hundred Feet of a Church.....	186
Definition of a "Retail Malt Dealer"	168	Duty of County Judge to Act on Petition	187
No Person Shall Sell Liquor Without License	169	Clerk to Furnish Certified Copy of Judgment	188
Malt Liquor Not to Be Sold Without License	170	Duty of Clerk to Issue License, When	189
Wine Growers Exempted—Regulations	171	Regulating Hours of Closing, etc. Requisites of Bond of Liquor Dealers	190
Shall Not Carry on Business at More than One Place—Transfer	172	Unearned Portion of License Returned in Case of Death.....	191
License to Be Forfeited for Violation of Law	173	Duty of Clerk to Make Out Statement	192
Application for Permit—What It Shall Contain	174	Duty of Clerk to Certify Forfeitures, etc.	193
Comptroller Given Power to Revoke License	175	Act of Servant Deemed to Be Act of Master	194
How Proceedings to Revoke Shall Be Instituted	176	No License Issued to Person Whose License Has Been Revoked Until Five Years.....	195
Duty of Officer Taking Depositions	177	License Not to Be Granted to Certain Persons	196
Failure of Witness to Appear—Procedure	178	Law Not to Conflict With Local Option Law	197
Failure of County Attorney to Appear—Procedure	179	License to Be Posted.....	198
Other Witnesses to Be Summoned, When	180	List of Licenses to Be Delivered to Grand Jury	199
Duty of Comptroller on Receipt of Depositions	181	District Judge to Charge Law to Grand Jury	200
Right of Appeal to the District Court	182	Fees of Certain Officers.....	201
Fees to Be Paid Officers for Taking Testimony	183	In Case of Forfeiture, May Dispose of Stock in Bulk.....	202
Number of Permits or Licenses to Be Issued—How Determined	184	"Intoxicating Liquor" Defined.....	203
		Law to Be Valid, Even Though Part is Held to Be Invalid.....	204

166. Amount of Tax to Be Collected From Liquor Dealers.—
There shall be collected from every person, firm or association of persons selling spirituous, vinous or malt liquors, or medicated bit-
ters capable of producing intoxication, in this State, not located

in any county, or subdivision of a county, justice precinct, city or town where local option is in force under the laws of Texas, an annual tax of three hundred and seventy-five dollars on each separate establishment as follows: For selling such liquors or medicated bitters in quantities of one gallon or less than one gallon, three hundred and seventy-five dollars; for selling such liquors or medicated bitters in quantities of one gallon or more than one gallon, three hundred and seventy-five dollars; provided, that in selling one gallon the same may be made up of different liquors in unbroken packages aggregating not less than one gallon; for selling malt liquors exclusively, sixty-two dollars and fifty cents; provided, further, that nothing in this article shall be so construed as to exempt druggists who sell spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, on the prescription of a physician or otherwise, from the payment of the tax herein imposed; provided, further, that this article shall not apply to the sale by druggists of tinctures and drug compounds, in the preparation of which such liquors or medicated bitters are used and sold on the prescription of a physician or otherwise, and which tinctures and compounds are not intoxicating beverages prepared in the evasion of the provisions of this chapter nor the local option law. The commissioners' courts of the several counties in this State shall have the power to levy and collect from every person or association of persons selling spirituous, vinous or malt liquors, or medicated bitters, a tax equal to one-half of the State tax herein levied; and, where any such sale is made in any incorporated city or town, such city or town shall have the power to levy and collect a tax upon such sale equal to that levied by the commissioners court of the county in which such city or town is situated; provided, that where any special charter gives the right to any city to refuse a license for the sale of intoxicating liquors, no license issued on behalf of the State or county shall become operative therein until a license therefor has been issued by such city. [R. S. Art. 7427, Acts 1909, 1st Spec. Sess., p. 293.]

The Baskin-McGregor Act of 1907, to which the Act of 1909 is an amendment, is held to not only repeal by expression all former laws with reference to retail of liquor, but the repeal by substitution is equally as certain. *Ex parte Vaccarezza*, 52 Tex. Cr., 311 (106 S. W. 392.)

A country club held not a person under the law, engaged in the occupation or business of selling intoxicating liquors. And the possession of an Internal Revenue liquor license by a club held not to fix on the officers thereof the liabilities of a retail liquor dealer. *State v. Duke*, 138 S. W., 385, 104 Tex. 355.

As to the status of druggists see *Kirk v. Morley*, 127 S. W. 1109.

See also *State v. Austin Club*, 33 S. W. 113.

See *Watts v. State*, 61 Cr. R. 364, 135 S. W. 585; *Ex parte Townsend*, 64 Cr. R. 350, 144 S. W. 628.

Statute imposing an occupation tax on the occupation of selling malt liquors does not apply to one following the occupation in a local option district. *Hail v. State*, 48 Cr. R. 514, 90 S. W. 503.

There is no repugnancy between Acts 1907, c. 138, p. 259, re-enacted with modifications and additions in 1909 and embodied in this chapter, and the general Sunday law. Both may and can stand in perfect harmony. *Ex parte Wright*, 56 Cr. R. 504, 120 S. W. 869.

Sales are in T. county so as not to subject one to the occupation tax pursuing the business of selling intoxicating liquors in C. county, where he sends circulars from T. county to C. county, soliciting orders, and on orders being received delivers the liquor in T. county to the buyer or to a carrier for him, the seller not undertaking to deliver in C. county. *State v. Texas Brewing Co. (Sup.)*, 157 S. W. 1166.

An ordinance of a city prohibiting saloons within certain prescribed limits does not contravene this article, giving one the right to sell liquors who has paid State and county occupation tax. *Garonsik v. State*, 50 Cr. R. 533, 100 S. W. 374.

Where the charter of a city defines limits within which saloons shall not be kept, one can be enjoined under Acts 1907, p. 166, from keeping a saloon within said limits, even though he has obtained a license under this law. *Paul v. State*, 48 C. A. 25, 106 S. W. 451.

The provisions of a city charter empowering the board of commissioners to fix saloon limits for the city were not repealed by Acts 1907, p. 258. *Ex parte King*, 52 Cr. R. 383, 107 S. W. 549.

Where a license to carry on a business is required for the sole purpose of raising revenue, and a statute inflicts a penalty by way of securing payment of the license named, a sale without a license is not invalid and the price of the goods may be recovered. *Eberstadt v. Jones*, 19 C. A. 480, 48 S. W. 558.

A country club held not a person, under the law, engaged in the occupation or business of selling intoxicating liquors. And the possession of an internal revenue liquor license by a club held not to fix on the officers thereof the liabilities of a retail liquor dealer. *State v. Duke*, 104 Tex. 355, 137 S. W. 654, 138 S. W. 385.

Organized clubs are not required or permitted to take out a license for sales of liquor to members as an incident to their organization and not as a business for profit. *Adams v. State (Cr. App.)*, 145 S. W. 940.

A social club may sell liquors to its members, without taking out a license. *Trezevant v. State (Cr. App.)*, 145 S. W. 1191.

A social club organized in Oklahoma, but which has not complied with the laws of Texas by filing its charter, etc., may not sell liquor in Texas, without a license; there being no showing that the law of Oklahoma permitted a club to sell liquor without a license. *Pace v. State (Cr. App.)*, 156 S. W. 1192.

In view of past legislation, which at all times exempted druggists from any of the requirements applicable to liquor dealers, except the payment of the tax, the second clause of Art. 7428, though applying generally to all persons selling in quantities less than a gallon, would not include druggists, and hence the requirements of an application, petition, and bond

would not refer to druggists, and this is so, since otherwise there was no necessity of placing a proviso that druggists should not be exempt from payment of the annual tax, and since Arts. 7435, 7446 and 7452 were special provisions applying only to liquor sold to be drunk on the premises, and would not affect druggists who cannot sell for that purpose. *Kirk v. Morley* (Civ. App.), 127 S. W. 1109.

167. Definition of a "Retail Liquor Dealer."—A "retail liquor dealer" is a person or firm permitted by law, being licensed under the provisions of this law, to sell spirituous, vinous and malt liquors, and medicated bitters capable of producing intoxication, in quantities of one gallon or less, which may be drunk on the premises. Any person who sells intoxicating liquors in quantities less than one gallon shall be governed by the provisions of this law and be required to take out license hereunder. [R. S. Art. 7428.]

See *Ex parte Townsend*, 64 Cr. R. 350, 144 S. W. 628.

One sale of liquor taken from a licensed saloon by an employe of the saloon keeper would not constitute the employe a "retail liquor dealer," under this article. *Cassidy v. State*, 58 Cr. R. 454, 126 S. W. 600.

168. Definition of a "Retail Malt Dealer."—A "retail malt dealer" is a person or firm permitted by law, being licensed under the provisions of this law, to sell malt liquors capable of producing intoxication, exclusively in quantities of one gallon or less, which may be drunk on the premises. [R. S. Art. 7429.]

See *Ex parte Townsend*, 64 Cr. R. 350, 144 S. W. 628.

169. No Person Shall Sell Liquor Without License.—No person shall, directly or indirectly, sell spirituous or vinous liquors capable of producing intoxication, in quantities of one gallon or less, without taking out a license as a retail liquor dealer. [R. S. Art. 7430.]

See notes under Sec. 174.

See notes under Sections 173 and 175.

170. Malt Liquor Not to Be Sold Without License.—No person shall sell, directly or indirectly, malt liquor capable of producing intoxication, in quantities of one gallon or less, without taking out a license as a retail malt dealer; provided, that this article shall not apply to a retail liquor dealer, and that a retail liquor dealer's license shall be construed to embrace a retail malt dealer's license. [R. S. Art. 7431.]

See notes under Sec. 174.

See notes under Secs. 173 and 175.

171. Wine Growers Exempted—Regulations.—This law shall not be so construed as to deny the right of wine growers to sell wine of their own production in any quantity without license; provided, that such wine grower shall not permit nor suffer any wine so sold by him to be drunk on his premises; and provided, further, that this article shall not be so construed as to give any wine grower the right to sell any wine to any minor without the permission of the parent, master or guardian of such minor first had and obtained, or any habitual drunkard, after being notified by any relative of such drunkard not to make such sale, gift or disposition. [R. S. Art. 7432.]

This article does not make an unreasonable discrimination in favor of producers of native wines, and is not void under the fourteenth amendment of the Constitution of the United States. *Douthit v. State*, 98 Tex. 344, 83 S. W. 796, affirming *Douthit v. State*, 36 C. A. 396, 82 S. W. 353.

172. Shall Not Carry on Business at More Than One Place—Transfer.—No retail liquor dealer nor retail malt dealer shall carry on said business at more than one place at the same time under the same license, nor shall any such license be voluntarily assigned more than once; but, before the assignee of such license can engage in business thereunder, he shall comply with the provisions of this law, as required of the original licensee; and provided, further, that the sale of such license, whether in the name of the original licensee or assignee, may be made under execution or mortgage; and the purchaser of such license at such sale shall have the right to surrender such license to the State or county which issued the tax receipt which is the basis therefor, and shall receive therefor the pro rata unearned portion of such license; provided, further, that, should said original licensee, or his assignee, desire to change the place designated in said license, he may do so by applying to the county judge as in case of original application for license as provided in Article 7435 of this chapter, but it shall not be necessary to furnish another certificate from the Comptroller of Public Accounts. [R. S. Art. 7433.]

Right to conduct liquor business at the place specified in the license held not lost by temporary transfer of business to another place, without transfer of license. *McLeod v. State*, 33 C. A. 170, 76 S. W. 216.

Where a liquor dealer changes his location to another location in the same city, town or justice precinct, he does not have to apply to this office for permission to do so. See Section 7, page 295, Chapter 17, Acts of the Thirty-first Legislature. But it is necessary to apply to the county judge as in case of original application for a license as provided in Section 9 of this act. Ruling of State Comptroller.

173. License to Be Forfeited for Violation of Law.—Any person or firm having a license as a retail liquor dealer, or a retail malt dealer, who shall violate any of the provisions of this law, or the provisions or conditions of the liquor dealer's bond required by this law to be given by such person or firm, shall forfeit his or their license as a retail liquor dealer, or retail malt dealer, as the case may be; and, if affidavit is filed by any property taxpaying citizen in the office of the clerk of the county court that such person or firm, having either of such licenses, has been guilty of violating any of the provisions of this law, or the provisions or conditions of said liquor dealer's bond, it shall be the duty of the judge of said county court to immediately cause to be issued a notice in writing to such person or firm so having such license, notifying them of the filing of such affidavit; and it shall also be the duty of the judge of said county court to set a time for the hearing of said affidavit and evidence upon the same at a time not less than six days nor more than ten days after the date of filing of said affidavit; and, upon the hearing of said affidavit and the proof for and against the same, if it shall be determined that said person or firm so having such license has violated any of the provisions of this law, or any of the provisions or conditions of their said liquor dealer's bond, then it shall be the duty of the judge of said court to enter an order on the minutes of said court declaring the said license forfeited, and said license shall be canceled from said date. In case it is determined that the said person or firm so having such license has violated any of the provisions of this law, or any of the provisions or conditions of his said liquor dealer's bond, it shall be the duty of the clerk of said court to immediately notify the Comptroller of Public Accounts of the State of Texas, at Austin, Texas, of the result of such hearing. It shall be the duty of the county attorney to prosecute all complaints made as hereinbefore provided for, or in any other manner in this law provided for, against any person or firm engaged in the business of a retail liquor dealer, or a retail malt dealer, as the case may be, at the time which is designated by the county judge for the hearing of said complaint. In case either party make affidavit showing good cause why he can not at that time try the matters in issue, then said hearing may be postponed for a time not to exceed three days; and provided that no more than two postponements shall be granted to either party. [R. S. Art. 7434.]

NOTE.—Under the present law the State Comptroller can, at his discretion, in the statutory manner provided, forfeit the license of a liquor dealer for any violation of the laws pertaining to the shipment or sale of intoxicating liquors.

An agreement as to obtaining a liquor license held contrary to law, so that the State may, at its election, cancel the license. *Leon Mercantile Co. v. Anderson*, 56 C. A. 481, 121 S. W. 868.

A proceeding to revoke a retail liquor license for violation of law, is administrative and not judicial; the power being vested in the county judge rather than in the county court, and no appeal lies from his order, for want of statutory provision therefor. *Hernandez v. State* (Civ. App.), 135 S. W. 170. And it is not a suit by the State to recover a forfeiture, within the Constitution, as affecting the jurisdiction of the court of civil appeals. *Id.*

A liquor license is a permit, and not a vested property or contract right, and is receivable by the State, though subject to sale or mortgage or execution. *Baldaechi v. Goodlet* (Civ. App.), 145 S. W. 325.

One procuring a liquor license is charged with notice of the right to revoke it, and cannot assert that his constitutional rights are invaded, when the State seeks to exercise such right. *Id.*

Where two licenses were issued authorizing relator to sell intoxicating liquors at two different places in the same county, the revocation of one license for a violation of the liquor law does not ipso facto revoke the other license, so as to render relator's sales under it illegal. *Ex parte Hewgley* (Cr. App.), 150 S. W. 1174.

Under Const. Art. 5, par. 8, a district court has no jurisdiction to remove before it, by certiorari, proceedings by county judge to cancel a liquor license; such proceedings being administrative or ministerial, not judicial. *State v. De Silva*, 105 Tex. 95, 145 S. W. 330.

174. Application for Permit—What It Shall Contain.—Any person or persons desiring to obtain a retail liquor dealer's license in this State or a retail malt dealer's license, shall, before filing his or their petition for such license with the county judge as now provided by this law, make application under oath to the Comptroller of Public Accounts of this State for a permit to apply for a license to engage in such business, which application shall be in form substantially as follows:

To the Comptroller of Public Accounts of the State of Texas:

I, or we, and of the county of State of Texas, hereby apply for a permit to apply for a license to engage in the business of retail liquor dealer or dealers, or retail malt dealer or dealers under the laws of this State, said business to be conducted at No. Street, in in the county of State of Texas; that there is now no statute or ordinance of the city in force prohibiting the retail sale of liquors at said place; that I, or we, have resided for the past two years in county, State of Texas; and during said time have been engaged in the business of; that I am, or we are, not disqualified under the laws of this State from engaging in the proposed business; that no other person or corporation is in any manner interested in or to be interested in the proposed business; that I, or we, have not, since

the first day of May, A. D. 1909, as owner, or as the representative, agent or employe of any other person, kept open any saloon or place of business where spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication, were sold, or sold, aided, or advised any other person selling in or near any such house or place of business any such liquor after 12 o'clock midnight on Saturday, and between that hour and 5 o'clock a. m. of the following Monday of any week; and have not since the 1st day of July, A. D. 1913, as owner or as the representative, agent or employe of any other person kept open any saloon or place of business where spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication were sold, or sold, aided or advised any other person in selling in or near any such house or place of business any such liquor after 9:30 o'clock p. m. on Saturday and between that hour and 6 o'clock a. m. of the following Monday of any week or between the hours of 9:30 p. m. and 6 o'clock a. m. of the following morning of any week day; or since said date, either in person or by agent or employe, knowingly sold or permitted to be sold or given away in or near any such place of business, any spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, to any person under the age of 21 years, or to any student of any institution of learning, or to any habitual drunkard, after having been notified in writing through the sheriff or other peace officer, by the wife, sister, father, mother or daughter of such person not to sell to such habitual drunkard; or permitted any person not over the age of 21 years to enter and remain in such house or place of business, or permitted any games prohibited by the laws of this State to be played, dealt or exhibited in or about such house or place of business, or rented or let any part of the house or place of business in which such business was conducted to any person or persons for the purpose of conducting any game or games prohibited by the laws of this State; or knowingly sold or given away any adulterated or impure liquors of any kind, or sold or permitted, aided or advised in selling under a retail malt dealer's license any other liquors than those defined by the law as malt liquors. And if the permission herein sought be granted and the said retail license be issued, I or we, will not either in person, or knowingly by an agent, employe or representative, during the year for which such license shall run, keep open house or place where liquors shall be sold under such license or transact any business in such house or place of business after 9:30 o'clock p. m. on Saturday and between that hour and 6 o'clock a. m. on the following Monday of any week; or between the hours of 9:30 p. m. and 6 a. m. of the following morning of any

week day; or knowingly sell in or near any such place of business, or give away, or permit to be given away, any spirituous, vinous or malt liquors or medicated bitters, capable of producing intoxication, to any person under the age of 21 years, or to any student of any institution of learning, or to any habitual drunkard, after having been notified in writing, through the sheriff or other peace officer, by the wife, mother, father, daughter or sister not to sell to such habitual drunkard; or to permit any person not over the age of 21 years to enter and remain in such house or place of business; or permit any game prohibited by the laws of this State to be played, dealt or exhibited in or about such house or place of business, or rent or let any part of the house or place of business in which such business is conducted to any person or persons, for the purpose of conducting any game or games prohibited by the laws of this State; or knowingly sell or give away impure liquor or adulterated liquors of any kind; and if the application be for a retail malt dealer's license, it shall further state that he or they under the said license, will not sell any other liquors than those defined by law as "malt liquors." And it is hereby agreed that if the license to be applied for be issued, that the same will be issued upon condition that it shall remain in force only so long as I, or we, observe and carry out each and all of the declarations herein made, and that in the event, I, or we, violate any of the promises or do or perform any one or more of the acts which is herein declared shall not be done or performed, or in the event that I, or we, violate any law of this State relating to the regulation, sale or transportation of intoxicating liquors that either the county judge or the Comptroller of Public Accounts of the State of Texas, in the manner provided in this law, may rescind, cancel and annul the said State and county license granted in pursuance of this application, and that all money paid for such license shall be forfeited to the State and county or city to whom paid; and I, or we, will at once, upon the cancellation of such license, close up the place where such business is being conducted, and cease to do such business, and will not within five years from that date, again, either as owner, agent, representative or employe of any other person, attempt to enter into or engage in the retail liquor business, unless the order of the Comptroller canceling and rescinding such license shall be annulled, in case such license shall have been canceled by the Comptroller.

Sworn to and subscribed before me, within and for the

county of _____ State of Texas, by _____, on this, the _____
day of _____ 19_____.

(L. S.)

(Signature of Officer.)

That upon receiving such application, it shall be the duty of the Comptroller to file the same and keep it as a permanent record in his office, to examine and act upon the same; and, if he is satisfied that such applicant is entitled to such permit, he shall, upon the payment to him by the applicant of \$2.00, issue to him such permit, under his hand and the seal of his office, which together with a copy of such application, duly certified to under the hand and seal of the Comptroller, shall be delivered by him to the applicant; and the said permit, together with the certified copy of said application, shall be filed with the county judge, together with the petition for license to be filed with the county judge, and shall remain a permanent record in the office of the county judge; and no petition for a license shall be entertained by the county judge until said certified copy and permit have been filed with him by the applicant. [R. S. Art. 7435, as amended Acts S. S. 1913.]

See *Lyttleton v. Downer* (Civ. App.), 124 S. W. 994.

The word "place" used in the provision in regard to the contents of the application does not mean house, but only the general locality in which the business is to be carried on, either city, town, village or hamlet as the case might be. *Green v. Southard*, 94 Tex. 470, 61 S. W. 706.

An owner of property who leases it for a saloon for a specified sum per month, and a part of the profits of the business, is not interested in the business within this article; the word "interested" meaning an interest in the business itself. *Doyle v. Scott* (Civ. App.), 134 S. W. 829.

Where the houses in a town were not numbered, an application for a liquor license and the bond for the sale of liquor in such town was not objectionable for failure to give the number of the house in which the liquor was to be sold. *Douthit v. State*, 36 C. A. 396, 82 S. W. 352.

Description of premises in an application for a liquor license held not to have necessarily embraced two separate places of business. *Cox v. Thompson*, 37 C. A. 607, 85 S. W. 34.

An application for a liquor license and the bond executed and license issued thereunder held to sufficiently fulfill the requirements of the law as to description of the place at which the liquor was to be sold. *Douthit v. State*, (Civ. App.), 87 S. W. 190.

A county judge may permit a petition for a license to be amended on the day it is heard by inserting a necessary allegation, and failure to grant contestant's 10 days' time after the amendment is filed would not render void the order granting the petition. *Moss v. Warren* (Civ. App.), 123 S. W. 1157.

A license which designates the town in which the liquors are to be sold but which fails to designate the particular house in a place where the

streets and houses are not numbered is valid and a liquor dealer's bond is not void because it fails to designate the house in which the liquors are to be sold. *Green v. Southard*, 94 Tex. 470, 61 S. W. 706, reversing *Southard v. Green* (Civ. App.), 59 S. W. 839.

Failure to include in an application for a license to sell liquors all of the statutory requirements does not render the license void. *Moss v. Warren* (Civ. App.), 123 S. W. 1157.

A license to sell intoxicants is a mere permit to do what would otherwise be unlawful, and is subject to the police power. *Hernandez v. State* (Civ. App.), 135 S. W. 170.

It is not property within the constitutional prohibition against deprivation of property without due process. *Id.*

It is a revocable privilege, and not a property right. *State v. De Silva*, 105 Tex. 95, 145 S. W. 330.

While, as against the State, a licensee has not "property right" in a retail liquor license, he has such a right therein as against every one else within the constitutional guaranty against the deprivation of property without due process of law. *Lane v. Hewgley* (Civ. App.), 155 S. W. 348.

175. Comptroller Given Power to Revoke License.—In addition to the power conferred by this law upon the county judge to cancel or revoke license, the Comptroller of Public Accounts of the State of Texas shall likewise have power to cancel or revoke such license in the following manner:

If the Comptroller shall at any time be advised, or receive information, that any person or persons to whom a retail liquor dealer's license, or retail malt dealer's license, has been issued, has violated any of the conditions and provisions set out in the application filed with the Comptroller for a permit to apply for such license, as provided in the preceding article, it shall be his duty to at once institute an inquiry and ascertain, if possible, the names and residences of all persons who know and will testify to the facts concerning such violation; and, if it shall be necessary in making such inquiry to do so, he may call to his aid the State Revenue Agent, whose duty it shall be, upon the request of the Comptroller, to make a careful investigation of the charges and ascertain the names of the persons by whom such facts can be proven; and neither the Comptroller nor the State Revenue Agent shall disclose the name of any person who shall become an informer, or who shall aid in securing the names of such witnesses, or evidence relating to such matters. [R. S. Art. 7436.]

See *Lane v. Hewgley* (Civ. App.), 155 S. W. 348, *Id.*, 156 S. W. 911. This article is constitutional. *Lane v. Schultz & Buss* (Civ. App.), 146 S. W. 1009.

A proceeding for the revocation of a liquor license under this article and Articles 7437, 7438, 7441, 7442, is ministerial, not involving the guilt or innocence of the licensee, except as incidental to the ascertainment of the facts authorizing a revocation; and the statute is not violative of Constitution,

Art. 1, Par. 2, as delegating power which may be exercised only by the judiciary. *Baldacchi v. Goodlet* (Civ. App.), 145 S. W. 325.

A proceeding authorized by this article and Arts. 7437, 7438, 7441, 7442, for the revocation by the Comptroller of Public Accounts of liquor licenses for violations of the law by liquor dealers is not a suit by the State for a "forfeiture" or "penalty," within the Constitution, Art. 5, Par. 8, conferring on the district court exclusive jurisdiction of such suits; for, though an official act may be judicial as involving the exercise of discretion and judgment, yet, when discretion is conferred on an executive officer in the discharge of administrative or executive duties, the acts of the officer are not judicial. *Id.*

The Comptroller of Public Accounts is not disqualified from proceeding, under this article and Arts. 7437, 7438, 7441, 7442, for the revocation of a liquor license, merely because he has expressed an opinion by publicly declaring that on the receipt of depositions to be taken he will forfeit the license, especially where he states that he will decide the question according to the preponderance of the credible testimony adduced on the hearing. *Baldacchi v. Goodlet* (Civ. App.), 145 S. W. 325.

Under this article and Arts. 7437, 7438, 7441, 7442, a five-day notice of the time and place of investigation is sufficient. *Baldacchi v. Goodlet* (Civ. App.), 145 S. W. 325.

Where two licenses were issued authorizing relator to sell intoxicating liquors at two different places in the same county, the revocation of one license for a violation of the liquor law does not ipso facto revoke the other license, when no notice of a declaration of a forfeiture has been given, so as to render relator's sales made under the authority of the second license illegal. *Ex parte Hewgley* (Cr. App.), 150 S. W. 1174.

In the absence of anything in the statute indicating it, the suit against the Comptroller, authorized by Article 7443, to reinstate a retail liquor license annulled by him, is not required to be heard solely on the depositions taken under authority of the Comptroller, pursuant to Articles 7436-7442, in the proceedings for the annulment. *Lane v. Hewgley* (Civ. App.), 156 S. W. 911.

176. How Proceedings to Revoke Shall Be Instituted.—Upon securing the names of such witnesses, it shall be the duty of the Comptroller to, in his discretion, either notify the county judge of the proper county of the alleged violation of this law by the licensee, or to issue a commission addressed to an officer to be selected by the Comptroller, who is authorized under the laws of this State to take depositions in the county in which the place of business is located, where he is advised such violation occurred, stating therein the violation of the law charged, and the name or names of the persons charged therewith, and directing him to take the deposition of the witnesses named in the commission, and the depositions of such other persons as may be required or necessary, and, when such depositions are taken, to return the same to the Comptroller in like manner as is provided by law governing the taking of depositions in civil suits in this State; provided, that if the Comptroller shall notify the county judge as above provided, it shall be his duty

to proceed at once to cause to be instituted against such licensee the proper proceedings in his court as provided by this law, and, if the county judge shall within ten days after receiving such notice cause to be instituted against such licensee the proper proceedings in his court, then the Comptroller shall proceed no further in the premises; but, if the county judge shall upon receiving such notice, fail or refuse to cause such proceedings to be instituted against the licensee, or should the Comptroller elect to proceed himself without notifying the county judge, then, in either of such cases, the Comptroller shall proceed himself as in this law provided. [R. S. Art. 7437.]

See notes under Section 175.

177. Duty of Officer Taking Depositions.—Upon receipt of said commission, such officer shall set a day for taking the depositions of the witnesses, and shall issue a subpoena commanding them to appear before him and testify on said day, and place the same in the hands of the proper officers for service on said witnesses; and shall also notify the county attorney of such county of the time when and the place where said depositions shall be taken, requesting him to appear at said time and place and interrogate said witnesses; and he shall also notify the person or persons who are charged with having conducted such business in violation of the law, and whose conduct is to be investigated, of the character of the charge, and of the time and place where said investigation will be conducted, and that he or they shall have the right to appear in person, or by attorney, and cross examine the said witnesses, and, if they so desire, to testify themselves or to offer the testimony of other witnesses relating to the matter under investigation; and the person whose conduct is to be investigated shall have the right to all proper process to compel the attendance of witnesses whose testimony he may desire. [R. S. Art. 7438.]

See notes under Section 175.

Where two licenses were issued authorizing relator to sell intoxicating liquors at two different places in the same county (Bexar), the revocation of one license for a violation of the liquor law does not ipso facto revoke the other license, when no notice of a declaration of a forfeiture has been given, so as to render relator's sales made under authority of the second license illegal. *Ex parte Hewgley*, 150 S. W. 1174.

And a suit to reinstate a liquor dealer is a trial de novo and not required to be heard solely on the depositions taken under authority of the Comptroller. *Id.*

178. Failure of Witnesses to Appear—Procedure.—If the said witnesses shall fail to obey the said subpoena, then the said officer

shall issue and cause to be served upon them attachments to compel their attendance; and he may punish them for contempt for failure to attend and testify as provided by law in case of taking depositions in civil suits in this State. [R. S. Art. 7439.]

179. Failure of County Attorney to Appear—Procedure.—If the county attorneys shall fail or refuse to appear and conduct the examination of said witnesses, the said officer authorized to take such depositions may appoint some practicing attorney of said county to act in the absence of the county attorney, as special county attorney; and the said officer taking the depositions shall have the power, independently of the county attorney or any other person, to interrogate the witnesses so as to develop fully the facts. [R. S. Art. 7440.]

180. Other Witnesses to be Summoned, When.—At the time fixed, the said officer shall proceed to take the depositions of said witnesses in answer to oral questions to be propounded to them, and shall cause the questions and answers to be written down, and the depositions to be subscribed and sworn to by the witnesses, respectively, as provided by law for taking depositions; and such officers shall make a thorough investigation of the facts relating to the charges and he may summon other witnesses than those whose names have been furnished to him; and, when the taking of the testimony is concluded, and the depositions subscribed and sworn to by the witnesses, he shall certify thereto and shall seal up the commission together with the depositions in an envelope or package in like manner as is required by law in returning depositions in civil suits in this State, and deposit the same in the postoffice, postage prepaid, addressed to the Comptroller of Public Accounts of the State of Texas at Austin, Texas. [R. S. Art. 7441.]

See notes under Section 175.

181. Duty of Comptroller on Receipt of Depositions.—Upon receipt of the said depositions, the Comptroller shall open and proceed to consider the same, and, if he shall determine from the preponderance of the credible evidence therein contained, that at any time after the issuance of said license the house or place where the business of selling liquors under said license was conducted was kept open and business conducted therein after 9:30 p. m. on Saturday and between that hour and 6 o'clock a. m., on the following Monday of any week, or between the hours of 9:30 p. m. and 6 a. m. of the following morning of any week day, or that any intoxicating liquors or medicated bitters capable of producing intoxication were knowingly sold, permitted to be sold or given

by the holder or holders of such license to any person under the age of 21 years, or to any student of any institution of learning, or to any habitual drunkard after having been notified in writing through the sheriff, or other peace officer, by the wife, mother, father, daughter or sister of such habitual drunkard not to sell same to him, or that any person not over the age of twenty-one years had been permitted to enter and remain in such house or place of business, or that games prohibited by laws of this State had been permitted to be played, dealt or exhibited in or about such house or place of business, or that the person or persons holding such license had rented or let any part of the said house or place of business where such business is conducted to any person or persons for the purpose of conducting any game or games prohibited by the laws of this State, or that the person or persons holding such license had knowingly sold or given away any adulterated or impure liquors of any kind, or sold or knowingly permitted to be sold, or aided or advised in selling, under a retail malt dealer's license, any other liquors than those defined by law as malt liquors, he shall rescind, vacate and withdraw such license, and shall issue a certificate in triplicate under his hand and the seal of said office, declaring the rescission of such license, theretofore issued, to such person or persons, one copy of which certificate shall remain on file in his office, and one copy shall be forwarded by the Comptroller by mail to the county judge of the county where the place of business of the person or persons whose license is withdrawn and rescinded is located, and the other copy shall be forwarded by mail to the person or persons whose license has been so rescinded and withdrawn; and it shall be unlawful thereafter for such person or persons to continue such business, and any attempt to do so shall subject him or them to the penalty herein provided for pursuing such business without a license; and any person or persons whose license has been so rescinded and withdrawn shall forfeit to the State, county and city all money paid therefor, and they shall never have any claim against the State, county or city on account of any money paid for such license. [Acts 1st S. S., 1913; R. S. Art. 7442.]

See notes under Section 175.

182. Right of Appeal to the District Court.—Any person feeling himself aggrieved by the action of the Comptroller in vacating, annulling and rescinding such license under this law, may bring suit in the district court of the county of his residence in Texas against the Comptroller to reinstate such license, but the business conducted

under such license shall be suspended during the pendency of such suit, and shall not be reopened, unless the order of the Comptroller shall be set aside by final judgment of the proper court; but, if such order shall be by a final judgment set aside, then such licensee shall have the right to pursue such occupation under such license without paying any additional tax for a period to be added to the time of the license equal to the time his right to do business was suspended. [R. S. Art. 7443.]

An action for the reinstatement of a liquor dealer's license forfeited by the State Comptroller is a "civil case." *Lane v. Hewgley*, 155 S. W. 348.

And the Comptroller can appeal therefrom. *Id.*

Under this article, the right to relief from the acts of the Comptroller is limited by the act except where an act of the Comptroller is outside of his granted powers. *Lane v. Schultz & Buss* (Civ. App.), 146 S. W. 1009.

Constitution, Art. 5, Par. 8, as amended in 1891, giving district courts "such other jurisdiction * * * as may be provided by law," authorizes this article. *Lane v. Hewgley* (Civ. App.), 156 S. W. 911.

An action under this article is a "civil case," within Const. Art. 5, Par. 6, conferring on courts of civil appeals appellate jurisdiction in all civil cases of which the district or county courts have original or appellate jurisdiction, a civil case being a proceeding in a court of justice by one party against another for the enforcement or protection of a private right, or for the redress or prevention of a private wrong, and hence the Comptroller could appeal from a judgment reinstating such a license (citing 2 Words and Phrases 1182). *Lane v. Hewgley* (Civ. App.), 155 S. W. 348.

It is not necessary that this article should expressly provide for an appeal; such suit being a civil action, and Article 2078 providing that an appeal may be taken to the Court of Civil Appeals from every final judgment of the district court in civil cases. *Lane v. Hewgley* (Civ. App.), 156 S. W. 911.

In the absence of anything in the statute indicating it, the suit against the Comptroller, authorized by this article, to reinstate a retail liquor license annulled by him is not required to be heard solely on the depositions taken under authority of the Comptroller, pursuant to Articles 7436-7442, in the proceedings for the annulment. *Lane v. Hewgley* (Civ. App.), 156 S. W. 911.

183. Fees to Be Paid Officers for Taking Testimony.—The county attorney, or his substitute, shall receive five dollars per day for attending the taking of depositions and interrogating the witnesses during the time necessarily consumed in the investigation herein provided for; the officer taking the deposition shall receive the same fees as are provided by the law for taking depositions, and the witnesses shall receive the same fees provided in criminal cases, the amount of which shall be fixed by the certificate of the officer taking the depositions, and shall be paid by the State upon warrants issued by the Comptroller. [R. S. Art. 7444.]

184. Number of Permits or Licenses to Be Issued—How Determined.—The Comptroller of Public Accounts of the State of

Texas shall not issue any permits to any person or firm for any city or town or justice precinct of any county in excess of the number of permits actually issued and existing on the twentieth day of February, 1909, in such city or town, or justice precinct, respectively, unless such number of permits are less than one for each five hundred inhabitants, in which event he shall, if applied for, issue permits not exceeding one for each five hundred inhabitants of such city or town or justice precinct. In case the number of permits issued and existing on the twentieth day of February, 1909, for each said city or town or justice precinct is in excess of one for each five hundred inhabitants, the number of permits existing on the twentieth day of February, 1909, as applied for, shall be granted; but that number shall not be increased until the number of inhabitants of such city or town or justice precinct increases to the extent that the permits issued and actually in existence on February 20, 1909, is less than one for each five hundred inhabitants; but the provisions of this article shall not apply to hotels now in existence, or which may hereafter be opened, when located in the business section of a city or town having a population of over twenty thousand; and provided that in granting permits for licenses as a retail liquor dealer, or a retail malt dealer, the Comptroller of Public Accounts shall give preference to those applicants who apply for a permit to do business at the places and location in said city or town, or justice precinct, where permits had heretofore been issued and granted; provided, further, that at least one permit may be issued in any city, town or justice precinct, where local option is not in force. The population of each city, town and justice precinct in the State shall be ascertained by the commissioners' court of such county at the August term thereof of each and every year in the following manner: It shall be the duty of the Superintendent of public instruction for such county, upon the request of such commissioners' court, to inform such commissioners' court of the total school census of each city and town and justice precinct; and it shall be the duty of the commissioners' court in determining the population of such city, town or justice precinct to estimate the population at the rate of six persons for every one name on such scholastic census, and upon such basis, at the August term of said court of each year, to ascertain and determine the population of such city, town and justice precinct, and to enter an order and decree upon the minutes of said court finding and determining what such population is, and shall send a certified copy thereof to the Comptroller of Public Accounts of the State of Texas. [R. S. Art. 7445.]

This article only restricts the number of permits in localities where not

more than the stated number were engaged in business on February 20, 1909, and does not require that issuance of permits up to the number of persons engaged in such business on that date can only be made to the persons then engaged in such business, but if the applications exceed the persons then engaged in such business, applicants for renewal licenses should be preferred. *Moss v. Warren* (Civ. App.), 123 S. W. 1157.

185. Petition for License—Requisites of.—Any person or firm desiring a license as a retail liquor dealer, or as a retail malt dealer, may, in vacation or in term time, file a petition with the judge of the county court of the county in which he desires to engage in such business, which petition shall have attached thereto as exhibits the permit and copy of application required by Article 7435, and shall state that the applicant is a law-abiding, taxpaying male citizen of the State of Texas, over the age of twenty-one years, and has been a resident of the county wherein such license is sought for more than two years next before the filing of such petition; and that his license as a retail liquor dealer, or retail malt dealer, has not been revoked or forfeited within five years next before the filing of such petition; that he desires a license as a retail liquor dealer, or as a retail malt dealer, as the case may be, specifically stating the place where such business is to be conducted, describing with reasonable certainty the house or place wherein the same is to be conducted, and, if the place of business be in any block or square of any town or city where there are more bona fide residences than there are business houses in said block or square, or in any block where there is a church or school, then said petition shall be accompanied with written consent of a majority of the bona fide householders or residents in said block or square, who have resided for at least six months preceding such application, and those within three hundred feet of such place of business. Upon the filing of the petition herein provided for, the county judge shall set the same for hearing at a time not less than ten or more than twenty days from the filing of same, and if, upon the trial or hearing thereof, he finds that facts stated in said petition are true and that the same is accompanied by the permit aforesaid, he shall grant a license such as prayed for; provided, however, that, upon the filing of such petition, the clerk of the county court shall give notice of the filing thereof, by posting on the court house door a written notice of such petition, together with the substance thereof; and the petition when filed shall remain with said clerk until the same is acted upon by the county judge and shall be open to the inspection of any person desiring to see the same. And any resident taxpaying citizen residing or owning property in the block or square where said business is to be conducted, or any such citizen residing or owning property within three

hundred feet of the proposed place of business, or the county or district attorney shall be permitted to contest the facts stated in such petition and the applicant's right to obtain the license sought, upon giving security for all costs which may be incurred in such suit, should the same be decided in favor of applicant; provided, no county nor district attorney shall be required to give bond for such costs, but the county or State, as the case may be, shall be liable therefor. [R. S. Art. 7446.]

Acts 1907, Chap. 138, is not in conflict with an ordinance of a city making limits within which intoxicating liquors shall not be sold, when the charter of the city authorizes such ordinance. *Andrews v. City of Beaumont*, 51 C. A. 625, 113 S. W. 616.

In petition to county judge for license to sell liquors it must be shown that applicant is entitled thereto. One requisite is that the place where the liquor is sold is not in local option territory. *Harrison v. Dickinson*, 52 C. A. 85, 113 S. W. 776.

The requirement of two years' residence does not conflict with the Constitution of the United States and is a reasonable exercise of the police power of the State. *De Grazier v. Stephens*, 101 Tex. 194, 105 S. W. 993, 16 L. R. A. (N. S.) 1033, 16 Ann. Cas. 1059.

This article requires the judge to pass on the application in vacation, and not at a regular term. *Moss v. Warren* (Civ. App.), 123 S. W. 1157.

186. License Not to Be Granted for Business Within Three Hundred Feet of a Church.—The county judge shall in no case grant a license in any village, town or city, where the proposed place of business is within three hundred feet of a church, school or other educational or charitable institution, the measurements to be along the property lines of the street fronts, and from front door to front door, and in a direct line across intersections where they occur; provided, the proposed place of business is not within a business block, or within three hundred feet thereof, as such block is defined in the preceding article. [R. S. Art. 7447.]

Cited, *Lyttleton v. Downer* (Civ. App.), 124 S. W. 994.

187. Duty of County Judge to Act on Petition.—Upon the hearing of the petition, as provided in Article 7446, the county judge shall determine the truth or falsity of the facts alleged, and shall render his judgment granting or refusing the license accordingly, and shall cause the same to be recorded at length in a book kept for that purpose, which book shall be a record of said court and shall be preserved by the clerk as an archive of his office. [R. S. Art. 7448.]

188. Clerk to Furnish Certified Copy of Judgment.—Upon the granting of a license by the county judge, as provided by law, the

clerk shall furnish the applicant with a certified copy of the judgment, which, when exhibited to the county tax collector of the license tax herein provided for, said collector shall receive said license tax and issue to such applicant his receipt therefor, showing the amount paid, date of payment, for what paid, whether retail liquor dealer's or retail malt dealer's license, and where such business is to be conducted. [R. S. Art. 7449.]

189. Duty of Clerk to Issue License, When.—Upon the presentation to the county clerk by the applicant of the tax collector's receipt provided for in the preceding article, and delivery to him of the bond provided for in Article 7452 of this chapter, he shall examine such bond and receipt; and, if such bond conforms to the provisions of said Article 7452, and if the said receipt conforms to the judgment authorizing the same, he shall issue to the applicant the proper license, which shall be by him signed, be under the seal of his office, be dated, state on its face for what it is issued, the date when it will expire, by whom and where such business is to be conducted, and shall describe the place where the same is to be kept. [R. S. Art. 7450.]

190. Regulating Hours of Closing, Etc.—Every person or firm having a license under the provisions of this law, who may be engaged in or who may hereafter engage in the sale of intoxicating liquors to be drunk on the premises in any locality of this State, other than where local option is in force, shall close and keep closed their houses and places of business and transact no business herein or therefrom from and after 9:30 o'clock p. m. on Saturday and between that hour and 6:00 o'clock a. m. on the following Monday of any week; or between the hours of 9:30 p. m. and 6:00 a. m. of the following morning of any week day, and shall close and keep closed their houses and places of business and transact no business therein or therefrom from and after 9:30 p. m. Saturday until 6:00 a. m. of the following Monday of each week; and between the hours of 9:30 p. m. and 6:00 a. m. of any week day. [Acts 1909, 1st S. S., p. 294, Sec. 14, Acts 1913, S. S., p. 58, Sec. 1, amending Art. 7451, Rev. St. 1911.]

Cited, in dissenting opinion, *Moreno v. State*, 64 Cr. R. 660, 143 S. W. 156.

An affidavit stating that a certain person had a retail license to sell liquor at a certain place on a certain date, and that on such date, at a prohibited time, he sold liquor, in violation of this article, was sufficient to authorize the county court to issue the notice provided for in Section 8, informing him, in effect, that the matter of cancelling his license would be heard at a certain time. *State v. De Silva*, 105 Tex. 95, 145 S. W. 330.

For sufficiency in indictments, see *Celli v. State*, 60 App. 311, 131 S. W. 597.

See Article 615 of Revised Penal Code for penalty.
As to evidence, see *Woods v. State*, 151 S. W. 296.

191. Requisites of Bond of Liquor Dealers.—Every person or firm desiring to engage in the sale of spirituous, vinous or malt liquors, or medicated bitters, capable of producing intoxication to be drunk on the premises, shall, before engaging in such sale, be required to enter into a bond in the sum of five thousand dollars; provided, however, that any person or firm dealing exclusively in malt liquors shall be required to give bond only in the sum of one thousand dollars, with at least two good, lawful and sufficient sureties, and the sureties required by law on the bonds of liquor dealers shall make affidavit, before some officer authorized to administer oaths, that they, in their own right, over and above all exemptions, are each worth the full amount of the bond they sign as sureties; and no county judge shall approve any such bond unless the affidavit as provided for in this article shall have been duly made. The approval of any such bond by the county judge without such affidavit shall make said county judge liable for any penalty recovered on such liquor dealer's bond; and any person who shall make any false affidavit, as required by this law, shall be punished as provided for in the Penal Code of this State; provided, that nothing herein shall prevent the making of such bond by a surety company, as permitted by law, payable to the State of Texas, to be approved as to security by the county judge; which bond shall be conditioned that said person or firm so selling spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication, in any quantity, to be drunk on the premises, shall not, either in person or knowingly by any agent, employe or representative, during the year for which such license shall run, keep open the house or place where liquors shall be sold under such license for the sale thereof, or transact such business in such house or place of business, after 9:30 o'clock p. m. on Saturday and between that hour and 6 o'clock a. m. on the following Monday of any week, or between the hours of 9:30 p. m. and 6 a. m. of the following morning of any week day, and that such person or firm shall keep an open, quiet and orderly house or place for the sale of spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, and that such person or firm, or his or their agent or employe, will not sell or permit to be sold in his or their house or place of business, nor give nor permit to be given any spirituous, vinous, or malt liquors, or medicated bitters capable of producing intoxication, to any person under the age of 21 years, or to a student of any institution of learning, or any habitual drunkard, after having been notified in

writing through the sheriff or other peace officer, by the wife, father, mother, daughter or sister of such habitual drunkard; said notice shall be in force and effect for a period of two years, not to sell to any such person, and that he or they will not permit any person under the age of 21 years to enter and remain in such house or place of business; that he or they will not permit any games prohibited by the law of this State to be played, dealt or exhibited in or about such house or place of business, and that he or they will not rent or let any part of the house or place in which he or they have undertaken to sell spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, in any quantity, to be drunk on the premises, to any person or persons for the purpose of running or conducting any game or games prohibited by the laws of this State, and that he or they will not adulterate the liquors sold by them in any manner, mixing the same with any drug, and that he or they will not knowingly sell or give away any impure or adulterated liquors of any kind, and that he or they will not violate any law of this State relating to the regulation, sale or transportation of intoxicating liquors, which said bond shall be filed in the office of the county clerk of the county where such business is conducted, and shall be recorded by such clerk in a book to be kept for such purpose; for which service said clerk shall be entitled to a fee of seventy-five cents; which said bond may be sued on at the instance of any person or persons aggrieved by the violations of its provisions, and such person shall be entitled to recover the sum of five hundred dollars as liquidated damages for such infraction of the conditions of such bond; and the said bond shall not be void on the first recovery, but may be sued on until the full penal sum named therein shall have been recovered. In addition to civil proceedings for individual injuries brought on said bond, as above indicated, if any person or firm shall violate any of the conditions of the bond herein required, it shall be the duty of the county and district attorneys, or either of them, to institute suit thereupon; or any person owning real property in the county may institute suit thereupon in the name of the State of Texas, for the use and benefit of the county, but no compensation shall be allowed such citizen, and he may be required to give security for costs; and the amount of five hundred dollars as a penalty shall be recovered from the principals and sureties upon the liquor dealer's bond, upon the breach of any of the conditions thereof; and thereafter when any recovery is had by any person or by any county or district attorney, for the use and benefit of the county in any action in any court of competent jurisdiction, upon the bond of any person or firm engaged

in the sale of spirituous, vinous, or malt liquors or medicated bitters capable of producing intoxication, or malt liquors exclusively, to be drunk on the premises, in any locality other than where local option is in force, upon the ground that such licensee sold, or permitted to be sold, or gave or permitted to be given, any such liquors to a minor in his place of business, or permitted a minor to enter or remain in his place of business, or sold such liquor to any habitual drunkard, after having been notified in writing not to sell to such habitual drunkard, or that such licensee permitted prostitutes or lewd women to enter and remain in his place of business, or permitted any games prohibited by the law to be played, dealt or exhibited in or about his place of business, or of renting or letting his place of business, or any part thereof, for such purpose or purposes, the license of such person or firm shall, by reason of such recovery, be forfeited, revoked and cancelled; and that court entering judgment of recovery shall also enter an order declaring forfeited, revoked and cancelled such license; and the unearned portion of the occupation tax paid therefor shall not be refunded, but shall be forfeited to the State and county, city or town to which the money for the same may have been paid. And any person or firm who shall sell any such liquors or medicated bitters in any quantity, to be drunk on the premises, without first giving bond, as required by law, or who shall sell the same after said license shall have been forfeited, revoked or cancelled, shall be deemed guilty of a misdemeanor, and, on conviction shall be fined in the same amount provided for sales where no license has been obtained. An open house in the meaning of this chapter, is one in which no screens or other device is used or placed inside or outside of such house or place of business for the purpose of or that will obstruct the view through the open door or place of entrance into any such house or place where intoxicating liquors are sold to be drunk on the premises. A quiet house or place of business, in the meaning of this chapter, is one in which no music, loud or boisterous talking, yelling or indecent or vulgar language is allowed, used or practiced, or any other noise calculated to disturb or annoy any person residing or doing business in the vicinity of such house or place of business, or those passing along the streets or public highways. By an orderly house, is meant one in which no prostitutes or lewd women are allowed to enter or remain; and it is further provided that said house must not contain any vulgar or obscene pictures. Any surety on such bond may relieve himself from further liability thereon by giving the principal in said bond notice in writing that he will no longer remain as surety thereon, and filing with the county

judge an affidavit that such notice has been given; and, if within five days after such notice the principal fails to make a new bond, he shall cease to pursue said business until a new bond is given. Any person who shall continue to pursue said business after such notice is given and such affidavit is filed, shall be guilty of a misdemeanor and shall be punished as provided in cases where no license has been procured; provided, that where the sale was made in good faith, or the minor permitted to enter and remain in good faith, with the belief that the minor was of age, and there is good ground for such belief, that shall be a valid defense to any recovery on such bond; provided, further, that where the sale to any habitual drunkard is made in good faith, with the belief that he is not an habitual drunkard, and there are good grounds for such belief, that shall be a valid defense to any recovery on such bond; provided, the provisions of this law shall apply to suits by the State or of any individual. Provided, that no license shall be issued under this law to any person who has been convicted of a felony and served such term of conviction. [R. S. Art. 7452, Acts 1st S. S., 1913.]

NOTE.—But it is necessary that a special appropriation for this purpose be made by the Legislature.

Article 5060g, Rev. St. 1895, superseded by this article, is not repealed by Acts 1907, Chap. 138, p. 258, known as the Baskin-McGregor law, regulating the sale of liquor. The latter law only repeals laws in conflict with it. It re-enacts that part of this law relating to sale of liquor to habitual drunkards. *Coughtry v. Haupt*, 47 C. A. 452, 105 S. W. 516; *Jessee v. De Shong* (Civ. App.), 105 S. W. 1013-1016; *Price v. Wakeham*, 48 C. A. 339, 107 S. W. 133; *Markus v. Thompson*, 51 C. A., 239, 111 S. W. 1076; *Farenthold v. Tell*, 52 C. A. 110, 113 S. W. 625.

This act was passed in lieu of and as a substitute for former acts, and, containing no saving clause in favor of causes of action accruing under former laws, defeated a right of action under a former law, although an action was pending at the time of its enactment. *Goodrich v. Wallis* (Civ. App.), 143 S. W. 285.

While the entry of a minor into a saloon with the purpose of attempting to induce his father, who was intoxicated, to leave the saloon, does not constitute a breach of the liquor dealer's bond, conditioned, that he would not permit minors to "enter and remain" in his saloon, where the evidence showed that the father frequently resorted to defendant's saloon, and there became intoxicated, and that his minor sons on various occasions came to the saloon to take their father away, it was a question of fact whether such condition of the bond was broken, in view of the fact that the word "remaining" does not mean a tarrying after the execution of some purpose not unlawful in itself, and the expression "enter and remain" means to stay for some indefinite length of time; that is, longer than is required for an immediate exit. *Haynes v. Haberrzettle* (Civ. App.), 152 S. W. 717.

The words "house or place of business" included an arbor kept by defendant for the purpose of selling liquors. So held in suit on bond for keeping a disorderly house. See case for sufficiency of petition. *Whitcomb v. State*, 21 S. W. 976, 2 C. A. 301.

The intention of the statute is that no obstruction, partial or otherwise, shall be placed in a retail liquor dealer's place of business to prevent those passing along the street from seeing what is taking place inside the place of business. Any screen or device which materially defeats that object is unlawful. *Componovo v. State* (Civ. App.), 39 S. W. 1114.

It is not a breach of the condition in the bond to keep an "open house" for the bar to be located at the back end of the house, in an angle so that it and the persons standing by it could not be seen from the street in front, and when no screen or other obstruction was used to prevent a view from the front door, and when the bar was at the most suitable place in the house for it, and the house was of an irregular shape, but not built for a saloon. *State v. Langran & Co.*, 39 C. A. 69, 87 S. W. 714.

A saloon conducted in a wing of the entrance lobby of a hotel in plain view of the entrance thereto is conducted in an "open house." *Doyle v. Scott* (Civ. App.), 134 S. W. 829.

A quiet, orderly house or place for the sale of liquor, within the condition of a bond, is one in which no music, loud or boisterous talking, yelling, or indecent, vulgar language is allowed, or any other noise calculated to disturb persons residing or doing business in the vicinity. *Adams v. State* (Civ. App.), 146 S. W. 1086.

Disturbance of the peace, committed in an inclosure in the rear of a saloon, held covered by the liquor dealer's bond, conditioned for his keeping a quiet, orderly house. *Id.*

See this case for definition of the words "vulgar" and "obscene" by the trial court held to be erroneous, and also a proper definition by the appellate court. *Raley v. State*, 47 C. A. 426, 105 S. W. 343.

A bond payable to the county judge instead of to the State is void. *State v. Vinson*, 23 S. W. 807, 5 C. A. 315.

A bond is not invalidated by the omission of the name of the county in which the business is to be carried on. *State v. Setterle* (Civ. App.), 26 S. W. 764.

A liquor dealer's bond held not defective because not reciting that the liquors were to be drunk on the premises. *McMonigal v. State* (Civ. App.), 45 S. W. 1038.

If the license is void the bond falls with it and is also void. *Southard v. Green* (Civ. App.), 59 S. W. 841.

The fact that the house is not designated in the license does not render the bond invalid, although the statute requires the house to be designated in the license. *Green v. Southard*, 94 Tex. 470, 61 S. W. 706; *Douthit v. State*, 98 Tex. 344, 83 S. W. 796.

Using "to" instead of the word "through" in the sentence "through doors opening out," etc., does not make the bond more onerous than the law requires. *State v. Wharton*, 26 C. A. 262, 63 S. W. 915.

When the license was issued to sell liquors at a certain place in a city and afterwards the licensee determined to have the license transferred to another particular place but by some means a different place was designated in the license than the one where the business was carried on, the sureties on the bond were not liable for the dealer's selling liquor to an habitual

drunkard. It would be otherwise if the license had been changed to cover the place to which the dealer removed. *Saffroi v. Cobun*, 32 C. A. 79, 73 S. W. 829.

Where a person engaged in the exclusive sale of malt liquors voluntarily gave bond in the sum of \$5,000, such bond was not more oppressive or burdensome than the bond required by statute, so as to render same void, but it was enforceable as against the sureties thereon to the extent of the statutory penalty. In this case the bond that he was required to give was \$1,000. *Meador v. Adams*, 33 C. A. 167, 76 S. W. 239.

The fact that one intended to sell other than malt liquors, and did so sell, and paid the tax therefor, does not render the bond for \$1,000, given by mistake instead of a \$5,000 bond, void as a malt liquor dealer's bond. *Jones v. State* (Civ. App.), 81 S. W. 1012.

Liquor dealer's bond held not void for failure to particularly designate the house in which liquor was to be sold. *Morris v. Mills* (Civ. App.), 82 S. W. 334.

Where a liquor license and the bond on which the action was brought were in legal form and properly issued, it was immaterial that the application for the license was defective. *Castellano v. Marks*, 37 C. A. 273, 83 S. W. 729.

That an application for a liquor license, in describing the place of business, included two separate places, did not preclude a recovery in an action on the bond. *Cox v. Thompson*, 37 C. A. 607, 85 S. W. 34.

A liquor dealer's bond having but one surety held not a valid statutory bond. *Hillman v. Mayher*, 38 C. A. 377, 85 S. W. 818.

A bond intended to be taken as a statutory liquor dealer's bond held not good as a common-law bond. *Id.*

A bond of two persons engaging in the liquor business held valid, though conditioned only that one of them conform to the statute. *State v. Harper & Crow*, 99 Tex. 19, 86 S. W. 920, reversing *State v. Harper & Crow* (Civ. App.), 85 S. W. 294.

Certain irregularities held not to vitiate a retail liquor dealer's bond. *State v. Harper & Crow* (Civ. App.), 87 S. W. 878.

The validity of a liquor dealer's bond is not affected, because purporting to bind the heirs and legal representatives of the obligors. *McLaury v. Watelsky*, 39 C. A. 394, 87 S. W. 1045.

A bond with a bonding company as surety instead of two individuals as sureties is in compliance with Article 4928, and sufficient. *Taggart v. Hillman*, 42 C. A. 394, 87 S. W. 245; *Taggart v. Graham* (Civ. App.), 93 S. W. 246.

Where the first part of the bond shows that the principal desired to sell spirituous, vinous and malt liquors, the bond is not fatally defective, because in the condition it is not specified what he is not to sell. The first part shows that the sales referred to are intoxicating liquors. *Edgar v. State*, 46 C. A. 171, 102 S. W. 440.

A liquor dealer's bond not signed by the principal until after it had been approved and filed and the acts complained of had been committed, held invalid. *State v. Teague*, 50 C. A. 535, 111 S. W. 234.

Death of a surety on a liquor dealer's bond does not make such bond void as against the principal and surviving surety. *McMonigal v. State* (Civ. App.), 45 S. W. 1038.

It is not enough that the bond be approved by the county judge. Until

it is filed for record it has no force, and no recovery can be had on it for violations of its provisions where the tax had been paid and the bond given and approved, but not filed for record. *Allen v. Houck & Dieter Co.* (Civ. App.), 92 S. W. 994.

The failure of the county judge to approve the bond held not to render it invalid, where the issuance of the license and the conduct of the business were otherwise proved. *Munoz v. Brassel* (Civ. App.), 108 S. W. 417.

A right of action to recover the statutory penalty for infractions of a liquor dealer's bond is terminated by the taking effect of a local option law in the county before the trial of the action. *Long v. A. L. Green & Co.* (Civ. App.), 95 S. W. 79.

Right to recover on a liquor dealer's bond the statutory penalty for selling intoxicants to a minor is held not terminated by the taking effect of local option. *Keer v. Mohr*, 47 C. A. 1, 103 S. W. 210.

Where the bond of a liquor dealer was conditioned to secure the performance of the duties imposed by a liquor license, the obligation of the company signing as surety terminated when the license ceased to exist as authority to the license to sell liquor. *Adams v. State*, 105 Tex. 374, 150 S. W. 591.

Principal on the bond responsible for the acts of his employe. *Grady v. Logan*, 2 App. C. C., Par. 265; *Maier v. State*, 21 S. W. 974, 2 C. A. 296.

The statute does not apply to a minor who is sent by his employer to a saloon to buy beer. *Laing v. State*, 28 S. W. 1040, 9 C. A. 126.

A retail liquor dealer and the sureties on his bond are liable for the act of the dealer's employe in allowing a minor to enter and remain in the dealer's place of business. *Manning v. Morris*, 28 C. A. 502, 67 S. W. 906.

The statute authorizing a recovery of liquidated damages by the person aggrieved in case of a breach of a liquor dealer's bond is penal in its nature, and should be strictly construed. *Choate v. Viha*, 40 C. A. 566, 89 S. W. 1082.

No action lies on a liquor dealer's bond for a violation of its terms committed before the filing thereof. *Allen v. Houck & Dieter Co.* (Civ. App.), 92 S. W. 993.

The principal in the bond is liable if the illegal sales are made, not by himself, but by his agents or employes. *Edgar v. State*, 46 C. A. 171, 102 S. W. 440.

A suit by an aggrieved party on a liquor dealer's bond to recover statutory liquidated damages for breaches thereof is in the nature of recovery of statutory penalties. *Jessee v. De Shong* (Civ. App.), 105 S. W. 1011.

In an action on a liquor dealer's bond to recover statutory penalties held unnecessary to expressly prove the issuance of the saloon license. *Munoz v. Brassel* (Civ. App.), 108 S. W. 417.

In an action on a retail liquor dealer's bond, plaintiff's motives in instituting the same held immaterial. *Farenthold v. Tell*, 52 C. A. 110, 113 S. W. 635.

An action cannot be maintained on a liquor dealer's bond without proof that at the time of the breach the liquor dealer had a valid license to sell. *Hillman v. Gallagher* (Civ. App.), 120 S. W. 505.

A dramshop keeper held liable on his bond for acts committed in a new building erected after the execution of the bond on the lot described therein. *McElroy v. Sparkman* (Civ. App.), 139 S. W. 529.

A liquor dealer accepting the terms of the statute and continuing in

business after its passage without taking out a new license, held liable for the penalties prescribed therein and in his bond for acts committed in violation of the terms of his bond. *Adams v. State*, 105 Tex. 374, 150 S. W. 591.

Acts Thirty-first Leg., First Extra Session, Chap. 17, Par. 35, which took effect July 12, 1909, providing for the determination of existing liquor licenses, must be held to give the canceled license the special effect of permitting the carrying on of the business during the 60 days of privilege granted, and to provide a new license during such 60 days rather than to continue the old, so that a surety upon a bond given on a license issued before the passage of the act could not be charged with any offense of the dealer committed after its passage. *Id.*

A valid local option election resulting in the adoption of the law is essential to any liability on a liquor dealer's bond given under the local option law. *State v. Savage*, 105 Tex. 467, 151 S. W. 530.

The right of a wife to recover on a liquor dealer's bond may be extinguished by a repeal of the statute. *Goodrich v. Wallis* (Civ. App.), 143 S. W. 285.

The notice to the dealer not to sell liquor to persons named in this section should be in writing and made by delivery to the dealer either the original notice or a copy thereof. Merely reading the notice to the person to be served therewith is not sufficient. *Reagan v. Wooten*, 4 App. C. C., Par. 133, 16 S. W. 546.

As to sale to habitual drunkards; provisions of statute considered. *Campbell v. Jones*, 21 S. W. 723, 2 C. A. 263.

Wife can recover on the bond although she gave notice before the bond was executed, and although the place of business of defendants stated in the notice is different from that stated in the license. *Rintleman v. Hahn*, 20 C. A. 244, 49 S. W. 174.

Where a wife has given a liquor dealer notice not to sell whisky to her husband and she thereafter consents to such a sale she cannot recover on the bond for a breach thereof. *Tipton v. Thompson*, 21 C. A. 143, 50 S. W. 641.

That a wife either failed to give or withdraw notice to one saloon-keeper against selling liquor to her husband does not affect her right of action against other saloonkeepers to whom such notice had been given. *Tarkington v. Burnett* (Civ. App.), 51 S. W. 274.

In a prosecution for violation of the local option law by sale to an habitual drunkard, defendant held entitled to a certain instruction on the question whether the sale was to the drunkard, or to a third person, for whom the drunkard acted as agent. *Douthitt v. State* (Civ. App.), 87 S. W. 190.

A bond of a liquor dealer conditioned, as required by this article, that he will not sell liquor to any habitual drunkard after having been notified in writing by the wife of the drunkard not to sell to him, is breached by a sale made at any time, however short, after notice has been given in the statutory manner. *McNeil v. Lewis* (Civ. App.), 145 S. W. 305.

Under this article a wife suing on the bond may prove that the dealer was notified not to sell by the direct testimony of the officer giving the notice. *Id.*

A notice not to sell intoxicating liquor to a person not an habitual

drunkard may be withdrawn. *Farenthold v. Tell*, 52 C. A. 110, 113 S. W. 635.

To render a revocation of a notice not to sell liquor to plaintiff's husband available as a defense, it must be shown that the revocation was by plaintiff. *Id.*

In an action on a retail liquor dealer's bond, held no defense that notices to other liquor dealers than defendant not to sell to plaintiff's husband had been revoked. *Id.*

In an action for damages through the sale of liquors to plaintiff's husband, it was immaterial that plaintiff withdrew notice to saloon men not to sell to her husband; such withdrawal not having been communicated to defendant. *Birkman v. Farenthold*, 52 C. A. 335, 114 S. W. 428.

A liquor dealer is charged with notice of minority. *McGuire v. Glass*, 4 App. C. C., Par. 52, 15 S. W. 127; *State v. Meyer* (Civ. App.), 23 S. W. 427.

Breach of bond in sale of liquor to a minor. *Maier v. State*, 21 S. W. 974, 2 C. A. 296.

A liquor dealer's bond is violated where a minor is permitted to enter and drink a glass of soda water. *Qualls v. Sayles*, 18 C. A. 400, 45 S. W. 839.

An action by the State on a liquor dealer's bond for permitting a minor to work in the saloon held not barred by the consent of the father of such minor. *McMonigal v. State* (Civ. App.), 45 S. W. 1038.

A father may recover a penalty under the statute for selling intoxicating liquors to his minor son, though the sales were not made on the exact day as alleged, or though he was not aggrieved by the sale. *Kruger v. Spachek*, 22 C. A. 307, 54 S. W. 295.

Where a minor was a partner in the business, held, an action could not be maintained for breach of a saloon keeper's bond in allowing him to remain in the saloon and act as bartender. *State v. Jordan*, 23 C. A. 136, 56 S. W. 601.

Where, in a suit on a liquor dealer's bond, plaintiff sought to recover damages for an unlawful sale of liquor to his son, it was not necessary for plaintiff to put defendant's license in evidence. *Lucas v. Johnson* (Civ. App.), 64 S. W. 823.

To render a liquor dealer and his sureties liable to a parent whose minor child is permitted by the saloon keeper to "enter and remain" in the saloon, it is necessary that such minor both "enter" and "remain." *Cox v. Thompson*, 32 C. A. 572, 75 S. W. 819; *Minter v. State*, 33 C. A. 182, 76 S. W. 312.

There is no civil liability for selling liquor to a minor, where the liquor dealer believed, and had good reason to believe, that the minor was over 21 years of age. *Tinkle v. Sweeney* (Civ. App.), 78 S. W. 248.

The bond is not breached by permitting minor to enter a saloon and remain momentarily, where proprietor called a minor into the saloon to have him fix a gasoline lamp, and the minor came in, looked at the lamp, walked around it, examining it, said that he could not fix it, and walked out. *Douthitt v. State*, 98 Tex. 344, 83 S. W. 797, reversing *Douthitt v. State*, 36 C. A. 396, 82 S. W. 352.

The law requires more of a dealer than that he will not knowingly permit liquors to be given to a minor in his place of business. It is his duty, if reasonably within his power, to prevent such. *Holly & Co. v. Simmons*, 38 C. A. 124, 85 S. W. 327.

A seller of intoxicating liquors held not liable on his bond for the giving of liquor to a minor in his place of business by a third person. *Holly v. Simmons*, 99 Tex. 230, 89 S. W. 776.

In an action on a liquor dealer's bond to recover a statutory penalty for permitting plaintiff's minor son to enter saloon, charges as to the necessity to a recovery, of defendant's knowledge of the minor's presence, held properly refused. *Munoz v. Brassel* (Civ. App.), 108 S. W. 417.

A liquor dealer's liability for selling liquor to a minor is statutory; the bond being merely security for its enforcement. *Hillman v. Gallagher* (Civ. App.), 120 S. W. 505.

A saloon keeper who sells liquor to a minor is liable on his bond under the provision relating to sale, and not to that relating to permitting minors to "enter and remain" in the saloon, and there is no liability under the latter provision where the minor enters and stays only momentarily, and does not in fact remain in the saloon. *Haynes v. Haberzettle* (Civ. App.), 152 S. W. 717.

The act of minors in entering a saloon to induce their father, who was intoxicated, to leave the same, could not be said as matter of law not to be a breach of the condition of the liquor dealer's bond against permitting minors to "enter and remain" in his saloon, where it appeared that the father had repeatedly resorted to defendant's saloon, and the children had on many occasions entered the saloon to take him away. *Id.*

To constitute a breach of a liquor dealer's bond by sale of whisky to college students, the students need not be minors. *Daniels v. College*, 20 C. A. 562, 50 S. W. 205.

A dealer's bond obligating him not to sell to students is broken by such a sale, whether or not he had been notified not to sell to the student. *Id.*

In an action on a bond given by a liquor dealer, obligating him not to sell to a student, it is immaterial where liquors so sold were drunk. *Id.*

A liquor seller's bond is forfeited by his permitting any music in his saloon. *State v. Rockwall Co.*, 8 C. A. 506, 28 S. W. 134.

In an action for breach of liquor bond in permitting plaintiff's minor son to gamble in saloon, want of consent of plaintiffs held inferable from fact that plaintiffs were then in a distant State. *Krick v. Dow* (Civ. App.), 84 S. W. 245.

In a suit against a retail liquor dealer and the sureties on his official bond for knowingly permitting a minor to enter upon and remain in the retail liquor dealer's place of business, it was held that the consent of the parent to the employment of his minor child in such a place of business did not protect the liquor dealer against the enforcement of the penalty of the bond. *Goldsticker v. Ford*, 62 Tex. 385.

The fact that the seller had reason to believe and did believe that the minor to whom he was selling was an adult and the sale was made with no intention of violating the law is not a defense to an action on the bond. But such belief is a defense in a criminal prosecution. *McGuire v. Glass*, 4 App. C. C., Par. 52, 15 S. W. 127.

In an action by a college under the civil damage laws for a sale to a student, a compromise with the student's father held not defense. *Daniels v. College*, 20 C. A. 562, 50 S. W. 205.

Where liquor dealers unlawfully sell liquor to a minor, whose father sues on their bond, and they do not deny the execution of the same, it is

proper to admit the application for a license and the bond is evidence. *Lucas v. Johnson* (Civ. App.), 64 S. W. 823.

Knowledge of the fact that the parties to whom the beer is sold are students of an institution of learning is not material to a saloon keeper's liability on his bond. *Peacock v. Limburger*, 95 Tex. 258, 66 S. W. 765.

Emancipation of minor held not a defense to parent's action on liquor dealer's bond for permitting the minor to enter and remain in saloon. *Cox v. Thompson*, 96 Tex. 468, 73 S. W. 950; *Price v. Wakeham*, 48 C. A. 339, 107 S. W. 132. Or for selling the minor liquor. *Id.*

The fact that a liquor dealer in good faith believes a minor, whom he permits to enter and remain in his saloon, to be of age, is no defense to an action permitting such entry and remaining. *Cox v. Thompson*, 32 C. A. 572, 75 S. W. 819.

Where a minor enters a saloon to procure a drink, and remains no longer than necessary for such purpose, the saloon keeper, who honestly believes him to be of age, is not liable for permitting a minor to enter and remain in saloons. *Id.*

If a minor enters a saloon for a lawful purpose, and leaves after he accomplishes it, no liability attaches to the saloon keeper, under statute giving parent right of action when minor enters and remains in a saloon. *Id.*

Consent of a parent to certain liquor dealer's selling liquor to his minor son held no defense to an action for a sale to him by another dealer. *Roach v. Springer* (Civ. App.), 75 S. W. 933.

Good faith in believing that a minor, entering and remaining in one's saloon, was an adult is no defense. The change in the law allowing good faith in believing that the person was an adult applies to sales to a minor and not to allowing him to enter and remain in the saloon. *Minter v. State*, 33 C. A. 182, 76 S. W. 313.

If within the meaning of the statute a minor is permitted to enter and remain in the house or place, the good faith of the owner will not prevent this from being a breach of the bond. *State v. Dittfurth & Friederichs* (Civ. App.), 79 S. W. 53.

That a liquor dealer believed that a minor, entering and remaining in his saloon, was of age, is no defense to an action on his bond. *Gilbreath v. State* (Civ. App.), 82 S. W. 807.

Neither the appearance of the minor nor signs stating that minors are not allowed to remain in a saloon justifies the saloon keeper in permitting a minor to gamble in his saloon. *Krick v. Dow* (Civ. App.), 84 S. W. 245.

In an action on a bond for furnishing liquor to a minor and permitting him to remain in the saloon, an instruction requiring the same to have been "knowingly done" to entitle plaintiff to recover, held error. *Findley v. Holley*, 37 C. A. 637, 85 S. W. 24.

An instruction defining the term "remain," as used in a special interrogatory as to permitting a minor to "remain" in saloon, as used in the sense of "tarry or loiter," held error. *Id.*

Good faith in believing that minors are over 21 years of age is no defense, when the ground of breach of the bond is permitting the giving of intoxicating liquors to minors. Good faith is applicable only to sales to or remain in a saloon, is error. *Wakeham v. Price* (Civ. App.), 89 S. W. 325.

In an action on a liquor bond for a sale to a minor, the use in an in-

struction, of the word "knowingly," to qualify the word "permit," used in the statute, making it a breach of the bond to permit a minor to enter or remain in a saloon, is error. *Wakeham v. Price* (Civ. App.), 89 S. W. 1093.

The fact that a father's course of conduct toward his minor son tended to encourage him in dissipated habits held not, as a matter of law, to prevent the father from recovering damages on the liquor bond for a sale of liquor to the minor. *Id.*

The fact that a father acquiesced in the sale of liquor to his minor son by a liquor dealer is a defense to an action by the father on the liquor dealer's bond for such a sale. *Price v. Wakeham*, 48 C. A. 339, 107 S. W. 132.

Under the law in force at the trial of an action on a liquor dealer's bond for permitting a minor to enter and remain in his saloon, the dealer's good faith in believing the minor to be of age was no defense. *Markus v. Thompson*, 51 C. A. 239, 111 S. W. 1074.

In an action on a liquor dealer's bond for permitting a minor to enter and remain in his saloon, it was no defense that plaintiff, the minor's father, had authorized other dealers to sell liquor to the minor. *Id.*

A suit on the bond may be brought by the party aggrieved or by the State. *McGuire v. Glass*, 4 App. C. C., Par. 51, 15 S. W. 127.

A married woman cannot maintain an action for the recovery of liquidated damages for the breach of a liquor dealer's bond in violation of the statute prohibiting the sale of liquor to a minor. *Wartelsky v. McGee*, 10 C. A. 220, 30 S. W. 69.

Where a wife has given notice not to sell to her husband, she may sue and recover the damages allowed by the State without showing any damages to her person or property by a sale contrary to such notice. *Fay v. Williams* (Civ. App.), 41 S. W. 497.

Under Act of May 6, 1893, Sec. 9 (Rev. St. 1895, Art. 5060g), re-enacted with modifications in this article, a widow can recover damages against a saloon keeper and his bondsmen for liquor sold to her minor son. *Frobese v. Peary* (Civ. App.), 43 S. W. 900.

A father may recover on a liquor dealer's bond for sales to the minor without showing that he is aggrieved. *Qualls v. Sayles*, 18 C. A. 400, 45 S. W. 839.

The State can bring an action on a liquor dealer's bond for permitting a minor to work in his place of business, although the father hired him. *McMonigal v. State* (Civ. App.), 45 S. W. 1038.

A wife held authorized to prosecute on a liquor dealer's bond required by Rev. St. 1895, Art. 3380, substantially identical with this article, without joining her husband. *Wright v. Tipton*, 92 Tex. 168, 46 S. W. 629.

A wife, having once notified a liquor dealer not to sell to her husband, need not renew the notice, to entitle her to recover damages for sales made to her husband under a subsequent license. *Rintleman v. Hahn*, 20 C. A. 244, 49 S. W. 174.

A wife can recover on liquor dealer's bond, though her reputation for chastity be bad. *Tipton v. Thompson*, 21 C. A. 143, 50 S. W. 641.

Wife of habitual drunkard may sue on liquor dealer's bond for the act of the dealer in selling liquor to her husband. *Burlew v. Schiller*, 41 C. A. 202, 92 S. W. 814.

A mother of a minor held entitled to maintain an action on a liquor dealer's bond for sales made to the minor during the life of his father, who

died pending an action by him on the bond for such sales. *Ellis v. Brooks*, 101 Tex. 591, 102 S. W. 94, 103 S. W. 1196.

A father of a minor to whom liquor was sold, and who was permitted to remain in a saloon, in violation of the law and the liquor dealer's bond, held, without further showing, a person "aggrieved," who could sue on the bond. *White v. Manning*, 46 C. A. 298, 102 S. W. 1160.

One held not barred from recovery on a liquor dealer's bond, for sale to his minor son and allowing him to remain in the saloon, because he had occasionally permitted the son to drink beer in his presence. *Id.*

A mother is entitled to sue on the bond where liquor is sold to her son who is a habitual drunkard, and she need not give notice to the dealer not to sell, to entitle her to sue. *Coughtry v. Haupt*, 47 C. A. 452, 105 S. W. 517.

In an action on a liquor dealer's bond for permitting a minor to enter and remain in his saloon, brought by the minor's father, it was unnecessary for the father to prove that he was aggrieved by defendant's act. *Markus v. Thompson*, 51 C. A. 239, 111 S. W. 1074.

A widow who for many years had had the care, nurture and maintenance of her brother, a minor and orphan, and has had the responsibility of the correct rearing and training of said minor (who is eighteen years old at time of bringing suit) stands in loco parentis towards said minor and is entitled to sue on liquor dealer's bond for selling liquor to said minor as "one aggrieved." *Saunders v. Alvido & Lasserre*, 52 C. A. 356, 113 S. W. 993.

The court may assume that a mother, who is the only surviving parent of a minor child, is the person aggrieved by a dramshop keeper permitting the minor to enter and remain in his saloon. *McElroy v. Sparkham* (Civ. App.), 139 S. W. 529.

A social club dispensing spirituous liquors to its members and acting in good faith is not within this article. *State v. Austin Club*, 89 Tex. 20, 33 S. W. 113, 30 L. K. A. 500.

The county court does not have jurisdiction of a suit on the bond. *State v. Stoutsenberger*, 4 App. C. C., Par. 247, 16 S. W. 304.

The district court held to have jurisdiction of an action to recover liquidated damages on a liquor dealer's bond for selling liquor to a minor. *Coburn v. Gill* (Civ. App.), 60 S. W. 974.

A suit against a liquor dealer to recover the statutory penalty for breach of the bond abates on the death of the liquor dealer. *State v. Schuene-mann*, 18 C. A. 485, 46 S. W. 260.

A suit on a liquor dealer's bond by a father for selling liquors to his son, does not abate on the death of the principal in the bond (the liquor dealer) although an action by the State on such bond for penalties for a breach of the bond does abate on the happening of such an event. *Nolan v. Tennison*, 21 C. A. 332, 50 S. W. 1028.

In an action on a liquor dealer's bond to recover a penalty for permitting plaintiff's minor son to enter a saloon, an action begun by the father and mother may be continued by the latter alone on the former's death. *Munoz v. Brassel* (Civ. App.), 108 S. W. 417.

A father held entitled to recover a separate penalty as liquidated damages for each infraction of defendant's liquor bond. *Coburn v. Gill* (Civ. App.), 60 S. W. 974.

The statute relating to actions on a liquor dealer's bond held to author-

ize the State to recover more than one penalty, where there has been more than one breach. *Jones v. State* (Civ. App.), 81 S. W. 1010.

The bond can be entirely exhausted by the county and district attorneys, or either of them, in the name of the State, for the penalty, for the use and benefit of the county. There may be a recovery for more than one breach of the bond. *Douthit v. State*, 36 C. A. 396, 82 S. W. 353.

The State can have successive recoveries upon the bond until it is exhausted, either by suits in its own behalf or by suits brought by parties aggrieved, or by both. *Douthit v. State*, 98 Tex. 344, 83 S. W. 797.

In an action by the State on a liquor dealer's bond, in which more than one breach is alleged, the State may recover more than one penalty. *Douthit v. State* (Civ. App.), 87 S. W. 190.

The State held entitled to recover on a liquor dealer's bond a penalty of \$500 for each violation up to the penalty of the bond. *Hawthorne v. State*, 39 C. A. 122, 87 S. W. 839.

There may be several actionable breaches of a liquor dealer's bond for permitting the same minor to be in his saloon on the same day. *Markus v. Thompson*, 51 C. A. 239, 111 S. W. 1074.

In an action to recover the penalty for selling liquor to plaintiff's husband, evidence held not to establish his habitual drunkenness. *Harley v. Kettle* (Civ. App.), 65 S. W. 48.

Evidence held not to sustain a judgment for infractions of a liquor dealer's bond, by selling liquor to a minor and permitting him to remain in the saloon. *Dickson v. Holt*, 30 C. A. 297, 70 S. W. 342.

Evidence held not to justify recovery on a liquor dealer's bond, though sale was to a minor. *Tinkle v. Sweeney*, 97 Tex. 190, 77 S. W. 609.

Evidence held not to show breach of condition of liquor dealer's bond relative to minors entering and remaining in place of business. *Tinkle v. Sweeney* (Civ. App.), 78 S. W. 248.

Evidence held not to show minor entered and remained in a saloon, within the statute. *Ghio v. Stephens* (Civ. App.), 78 S. W. 1084.

In an action to recover a statutory penalty on a liquor dealer's bond, plaintiff is required to establish his case only by a preponderance of the evidence. *Cox v. Thompson*, 37 C. A. 607, 85 S. W. 34.

In an action on a liquor dealer's bond, evidence held to justify a finding that the principal defendant knowingly permitted liquors to be given to minors. *Holly & Co. v. Simmons*, 38 C. A. 124, 85 S. W. 325.

In an action on a liquor dealer's bond, evidence held to establish a breach in permitting games to be exhibited and played about his place of business. *Hawthorne v. State*, 39 C. A. 122, 87 S. W. 839.

In an action against a retail liquor dealer and the sureties on his bond for the statutory penalty for selling liquor to a minor, evidence held not to raise the issue of a sale in good faith under the statute. *Creel v. Cordon*, 44 C. A. 367, 98 S. W. 387.

That a minor was allowed to remain in a saloon, in violation of the liquor dealer's bond, held sufficiently proved. *White v. Manning*, 46 C. A. 298, 102 S. W. 1160.

In an action on a liquor dealer's bond for damages through the sale of liquor to plaintiff's husband, testimony that, during a period from a date preceding the bond to the filing of the suit, there were 10 violations was not proof that any certain number of violations occurred during the life of the bond. *Birkman v. Fahrenthold*, 52 C. A. 335, 114 S. W. 428.

192. Unearned Portion of License Returned in Case of Death.—In the event of the death of any licensee under this law leaving an unearned portion of any license issued under this law, the heirs, executors, administrators or legal representatives of such deceased person may present the license of such person to the State and county and receive payment of the unearned portion of such license tax collected by them, respectively. [R. S. Art. 7453.]

NOTE.—But it is necessary that an appropriation for such purpose be made by the Legislature, so far as the State's portion is concerned.

193. Duty of Clerk to Make Out Statement.—The clerk of the county court shall make out a statement of all such licenses granted by him and the amount paid the collector on each for State and county taxes and report the same to the Comptroller of Public Accounts of the State. [R. S. Art. 7454.]

194. Duty of Clerk to Certify Forfeitures, Etc.—Hereafter, when the license issued to any person or firm to engage in the sale of spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, or malt liquors exclusively, to be drunk on the premises, in the locality other than where local option is in force, has been declared forfeited, by either the county or district court, revoked or canceled, it shall be the duty of the clerk of the county or district court to immediately certify such forfeiture under the seal of such court to the Comptroller of Public Accounts of the State of Texas, which said certificate shall state the date of such forfeiture, the number and the nature of the cause, and the name and residence of the licensee or defendant, the name of the person and style of the firm, and the names and places of residence of the individual members of any such firm, or the name and place of residence of any such person, as the case may be, as shown by the application for license filed by such person or firm in the county court; for which service the clerk shall receive a fee of one dollar, to be taxed against the defendant or defendants. And it shall be the duty of the Comptroller, upon receiving any such certificate, to file and record the same in a book to be kept by him for such purpose, and he shall likewise record all such forfeitures by him made; and thereafter no permit or license shall be issued to any such person or firm, or to any member of any such firm, to engage in the sale of spirituous, vinuous or malt liquors, or medicated bitters capable of producing intoxication, or malt liquors exclusively, within the period of five years from and after the date of entry of such forfeiture. [R. S. Art. 7455.]

195. Act of Servant Deemed to Be Act of Master.—Any sale, gift or other disposition of intoxicating liquors knowingly made to any minor, or to any habitual drunkard, or on any Sunday or election day by an agent, clerk or other person acting for any retail liquor dealer or retail malt dealer, or other person, shall be deemed and taken to be for all purposes of this law as the act of such retail liquor dealer or retail malt dealer or other person. [R. S. Art. 7456.]

196. No License Issued to Person Whose License Has Been Revoked, Until Five Years.—No retail liquor dealer's, nor retail malt dealer's license shall be issued to any person whose license as either a retail liquor dealer or retail malt dealer has been revoked or forfeited within five years before the filing of his application for license, or who has had in his employ in his business of retail liquor dealer, or retail malt dealer, any person whose license has been revoked or forfeited within five years next before the filing of such application. [R. S. Art. 7457.]

197. License not to Be Granted to Certain Persons.—No license shall be granted to any person as a retail liquor dealer, or as a retail malt dealer, who shall have carried on such business after the expiration of his license previously issued and without having received a license for such purpose, or whose license shall have been revoked or forfeited under the provisions of this law, within five years before the filing of his application for such license. No license shall be issued to any person to do business as a retail liquor dealer, or retail malt dealer, in any house or building used for the purpose of prostitution, or as a house of assignation, or as a house of ill-fame, or gambling house. If, after a license has been issued to a retail liquor dealer, or retail malt dealer, the building in which the same is located shall be used for the above mentioned purposes, or any of them, with the knowledge and consent of such licensee, his license may be revoked, as hereinbefore provided. [R. S. Art. 7458.]

Refusal of a liquor license on the ground that the place where it is proposed to open the saloon is unsuitable, held not as an abuse of discretion. *Ex parte Abrams*, 56 Cr. R. 465, 120 S. W. 883, 18 Ann. Cas. 45; *Ex parte Clark*, 56 Cr. R. 494, 120 S. W. 892; *Ex parte Parker*, 56 Cr. R. 544, 120 S. W. 892.

An applicant for a liquor license in the city of Texarkana, held not entitled to a license because the city council had discriminated against him in refusing him a license under a provision of the charter which it had violated in other instances. *Id.*

Mandamus will not lie to compel a county judge to issue a liquor license, where the proceedings to obtain it were taken under a law enacted in 1907 (Acts 1907, Chap. 138), and before the hearing on appeal that law had been repealed by Acts 1909, Chap. 17, embodied in this chapter. *Lytleton v. Downer* (Civ. App.), 124 S. W. 994.

198. Law not to Conflict with Local Option Law.—This law, or any of the provisions thereof, shall not be construed to be in conflict with any local option law now or hereafter to be in force in this State, and no license to any retail liquor or retail malt dealer shall be issued or shall be effective at any place where local option law is in force and operation. [R. S. Art. 7459.]

See, in dissenting opinion, *Moreno v. State*, 64 Cr. R. 660, 143 S. W. 156.

The provisions of this law do not apply to local option territory, and are not construed to be in conflict with any local option law. *Snead v. State*, 55 Cr. R. 583, 117 S. W. 987.

199. License to Be Posted.—Any license required by this law shall be posted in some conspicuous place in the house where the business or occupation for which such license is necessary is carried on before engaging in such business or occupation. [R. S. Art. 7460.]

Whether or not a license to sell intoxicants had been issued to accused is a fact which may be proved otherwise than by the exhibition of the license, this being particularly true in view of this article. *Woods v. State* (Cr. App.), 151 S. W. 296.

200. List of Licenses to Be Delivered to Grand Jury.—The county clerk of any county in this State where intoxicating liquors are sold, having a population of more than fifty thousand inhabitants, shall make out a list of all persons then having a license under the provisions of this law, and shall deliver the same to each grand jury impaneled in such county. Said list shall be arranged in alphabetical order, shall give the names of the persons to whom same were issued, the date of its issue, the date it will expire, stating whether the same is a retail liquor dealer's, or retail malt dealer's license, and shall describe where said license was to be used. [R. S. Art. 7461.]

201. District Judge to Charge Law to Grand Jury.—The judges of the district courts in this State shall give this law in special charge to each grand jury impaneled in their respective districts. [R. S. Art. 7462.]

202. Fees of Certain Officers.—The county clerk, county judge and other officers shall receive for services rendered in the carrying out of this law such fees as are now allowed by law for similar services. [R. S. Art. 7463.]

203. In Case of Forfeiture, May Dispose of Stock in Bulk.—In case the license of any retail liquor dealer, or retail malt dealer, is forfeited under any of the provisions of this law, nevertheless such licensee shall be authorized to sell or dispose of in bulk any stock

of intoxicating liquors he may have on hand at the time such license is forfeited. [R. S. Art. 7464.]

204. "Intoxicating Liquor" Defined.—The term "intoxicating liquor," as used in this law, shall be construed to mean fermented, vinous or spirituous liquors, or any composition of which fermented, vinous or spirituous liquors is a part; and all of the provisions of this law shall be liberally construed as remedial in character. [R. S. Art. 7465.]

See *Ex parte Townsend*, 64 Cr. R. 350, 144 S. W. 628.

Where, in a prosecution for the sale of intoxicating liquor in local option territory, there is no evidence raising the issue that the article sold, which was beer, was not intoxicating, but the case was tried on the theory that it was intoxicating and prohibited, there was no error in refusing an instruction based on the theory that the beer sold was not an intoxicating liquor, the courts will take judicial knowledge that beer is an intoxicating liquor. *Moreno v. State*, 64 Cr. R. 660, 134 S. W. 156.

205. Law to Be Valid, Even Though Part Is Held to Be Invalid.—If, for any reason, any article or part of this chapter shall be held by the courts to be unconstitutional or invalid, then that fact shall not invalidate any other part of this chapter, but the same shall be enforced without reference to the parts, if any, which shall be so held to be invalid, unless the entire chapter shall be held to be invalid. [R. S. Art. 7466.]

The intent of Acts 1907, p. 258, Chap. 138, is that those having licenses under the old law (Sayles' Ann. St. 1897, Arts. 5060a-5060i) should have a reasonable time in which to comply with the provisions of this law, during which they could continue to sell under the old law. Two months is not a reasonable time. *Ex parte Vaccarezza*, 52 Cr. R. 105, 105 S. W. 1120; *Barckell v. State* (Civ. App.), 106 S. W. 192; *Ex parte Vaccarezza*, 52 Cr. R. 311, 106 S. W. 392; *Williams v. State*, 52 Cr. R. 371, 107 S. W. 1126.

CHAPTER IX.

TAXES LEVIED ON SALE OF INTOXICATING LIQUORS IN LOCAL OPTION TERRITORY.

(From Chapter 6, Title 126, R. S.)

	SEC.		SEC.
Tax on Selling Intoxicating Li-		and Shall Designate Place of	
quors on Prescription in Local		Sale, etc.	210
Option Territory	206	License Required to Be Posted.....	211
Commissioners' Court May Levy		County Clerk to Report Applica-	
License Tax in Addition.....	207	tions for License to State Reve-	
Prerequisites to the Issue of Li-		nue Agent	212
cence to Sell in Dry Territory..	208	Producers of Domestic Wines Ex-	
License to Issue, When—Evidence		empt	213
of	209	Dealer Must Give Bond Before Li-	
License to Issue for One Year,		cence Will Issue.....	214

206. Tax for Selling Intoxicating Liquors on Prescription in Local Option Territory.—There shall be collected from every person, firm, corporation or association of persons, for every separate establishment selling vinous, malt or spirituous liquors or medicated bitters, within this State and located within a county, subdivision of a county, justice precinct, town or city, in which local option is in force under the laws, the sum of two hundred dollars; provided, the same shall not be sold in such locality, except on prescription and in compliance with the laws governing sales in such localities; provided, further, that nothing in this article shall be so construed as to exempt druggists who sell spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, on the prescription of a physician or otherwise, in either locality as above set forth, from the payment of the tax herein imposed; provided, further, that this article shall not apply to the sale by druggists of tinctures and drug compounds, in the preparation of which such liquors or medicated bitters are used and sold on the prescription of a physician or otherwise, and which tinctures and compounds are not intoxicating beverages prepared in the evasion of the provisions of this chapter nor the local option law. [R. S. Art. 7467.]

See *Ex parte Flake* (Cr. App.), 149 S. W. 146.

The Legislature can require parties in local option districts to pay tax for privilege of selling liquors. *Snearly v. State*, 40 Cr. R. 507, 52 S. W. 547, 53 S. W. 344.

A person engaged in the sale of liquors in a county or subdivision of a county where the local option law is in force is not liable to the occupa-

tion tax imposed by general laws of 1893 on retail liquor dealers. *Rathburn v. State* (Civ. App.), 32 S. W. 45.

Each one of the occupations named in this article is separate and distinct from the others and requires a license to pursue or engage in the particular business of selling in quantiles of one gallon or under one gallon in local option precincts, as the case may be. *Williamson v. State*, 41 Cr. R. 461, 55 S. W. 569.

Before a party can sell liquor in a local option territory he must have the required license to sell on prescription. *Watson v. State*, 42 Cr. R. 13, 57 S. W. 102; *Snead v. Same*, 55 Cr. R. 583, 117 S. W. 986.

If the malt liquor sold in a local option territory is not intoxicating, a license tax for the sale thereof is not required. *Ex parte Gray* (Cr. App.), 83 S. W. 828.

One cannot be punished for selling of liquor after he has been notified by the county judge to file a new bond when the sale is under a physician's prescription, regular in form and under a license and under a bond which has not been annulled. *Holland v. State*, 51 Cr. R. 157, 101 S. W. 1004.

207. Commissioners' Courts May Levy License Tax in Addition.—The commissioners' courts of the several counties in this State shall have the power to levy and collect from every person or association of persons selling spirituous, vinous or malt liquors, or medicated bitters, a tax equal to one-half the State tax herein levied; and where any such sale is made in any incorporated city or town such city or town shall have the power to levy and collect a tax upon such sale equal to that levied by the commissioners' court of the county in which such city or town is situated. [R. S. Art. 7468.]

208. Prerequisites to the Issue of License to Sell in Dry Territory.—Every person, firm corporation or association of persons, desiring to engage in the business of selling spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, in this State, in any county, justice precinct, school district, town, city, or other subdivision of a county where the qualified voters thereof have, by a majority vote, determined that the sale of such intoxicating liquors shall be prohibited therein, except for sacramental and medicinal purposes, shall, before engaging in such business, and in addition to all requirements of law now in force, file with the county judge of the county in which the said business is to be pursued, an application in writing for a license to engage therein, and shall state the county and the particular portion thereof in which the said business is to be pursued, and describe the building in which it is to be pursued; said application shall give the name, residence and address of every person connected with the said association, corporation, or other applicant, and shall state that each person so connected with said applicant is a bona fide resident of the county where said business is to be pursued; said application shall have attached

thereto a petition addressed to said county judge, requesting that a license be granted to said applicant or applicants, naming them, authorizing them to engage in the business of selling such liquors on prescriptions of physicians in a justice precinct and building to be named therein; said petition to be signed in person by a majority of the qualified voters of the justice precinct where said business is to be conducted at the time said petition is filed; said majority of qualified voters to be determined by the poll tax receipts and the exemption certificates issued by the tax collector of said county. There shall be attached to said petition an affidavit from some credible person or persons to the effect that every name signed to said petition is the genuine signature of the person represented to have signed the same. Upon the filing of said application for license and said petition with the county judge, the said judge shall set the same down for hearing, either in term time or in vacation, for some day not less than ten nor more than fifteen days from the day the same is filed; and said judge shall at once notify the county attorney of the day said hearing will be had. Upon the day so designated, or at some time thereafter to which the same may be postponed, the said county judge shall hear the said matter; and the county attorney, or any bona fide citizen of said justice precinct, may appear and contest the genuineness of the signatures to said petition, and whether or not a majority of the qualified voters have signed the same; and upon such hearing, if the said judge is convinced that the applicant or applicants have complied with all the requirements of law, he shall make his order authorizing the issuance of said license by the county clerk of said county, when the said applicant or applicants shall have paid all occupation taxes, given the required bond, and met all other requirements of existing laws concerning said business; but in no case shall such license be issued for a longer or shorter period than one year. [R. S. Art. 7469.]

209. License to Issue, When—Evidence of.—After the county judge has entered an order authorizing the issuance of a license, as provided in Article 7469, and the applicant shall have complied with the provisions of said order, the county clerk of said county shall issue to said applicant a license to sell spirituous, vinous, or malt liquors, or medicated bitters, at the place and in the manner and quantities set forth in the application, and no sale shall be made until such license is procured. The receipt of the tax collector shall be evidence of the payment of the tax. For issuing licenses herein provided for, county clerks shall be entitled to charge a fee of twenty-five cents for each license. [R. S. Art. 7470.]

210. License to Issue for One Year, and Shall Designate Place of Sale, Etc.—No license shall be granted for a longer or shorter period than one year. The particular place and house in which the liquors are to be sold shall be designated in the license, and no license shall authorize any person to sell spirituous, vinous, or malt liquors, or medicated bitters, at any other place or house than that designated in the license; provided, that if any person, or association of persons, having a license to sell such liquors, desires to change his or their place of business, such change may be made by presenting the license to the clerk of the county and having the new place of business inserted therein, but in no case to admit of the temporary closing of one place of business to sell at another place. [R. S. Art. 7471.]

See notes under Section 174.

211. Licenses Required to Be Posted.—The license provided for in this chapter, and the occupation tax receipts, together with the internal revenue receipt issued by the United States, shall be posted by the licensee in a conspicuous place in his or their place of business; and, on failure to so post such license, receipt or internal revenue receipt, he or they so failing shall be considered as having no license and subject to all the pains and penalties as if no such license had issued. [R. S. Art. 7472.]

212. County Clerk to Report Applications for License to State Revenue Agent.—The county clerk in each and every county in this State shall, between the first and tenth day in each month, forward to the State Revenue Agent a sworn statement, giving the names of all persons who have filed applications for license during the preceding month; and the tax collector of each county shall keep a register in which shall be entered the names of all persons paying taxes under this chapter, with the date of payment, and shall, between the first and tenth day of each month, make to the State Revenue Agent a sworn report, giving the names of all persons who have paid a liquor tax during the preceding month, and the character of tax paid by each. The reports provided for in this article shall be made upon blank forms to be furnished by the Comptroller. [R. S. Art. 7473.]

213. Producers of Domestic Wines Exempt.—The provisions of this chapter shall not apply to wines produced from grapes grown in this State, while the same is in the hands of the producers or manufacturers thereof. [R. S. Art. 7474.]

214. Dealer Must Give Bond Before License Will Issue.—Every person, firm, corporation or association of persons, before engaging

in the sale of spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, in any county, subdivision of a county, justice precinct, town or city, in which local option is in force, shall enter into a bond in the sum of twenty-five hundred dollars, with at least two good and sufficient sureties, payable to the State of Texas, to be approved by the county judge of the county in which such sales are to be made, conditioned that said person, firm, corporation or association of persons, so selling spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, shall not sell in any quantity, except on the prescription of a regular practicing physician, addressed to such person, firm, corporation or association of persons, written with ink on white paper in the handwriting of such physician, dated, numbered and signed by such physician, giving his and applicant's place of residence, and certifying on his honor, that he has in person carefully examined the applicant or patient, and that he finds him or her actually sick, giving the malady or disease with which he or she is suffering, as near as he can ascertain, and that he or she is in immediate need of an alcoholic stimulant, such as prescribed; and there shall not be sold more than one quart on any one prescription, which shall be sold at one time and in one package, and delivered to the purchaser at time of sale; and that he or they shall not permit the same to be drunk on the premises where sold, nor on any other premises owned or controlled by him or them; and that he or they shall not sell more than once on the same prescription, and shall not sell on any prescription bearing the same number of another prescription given by the same physician and dated during the same year; and that he or they shall not sell on a prescription bearing date more than three days prior to the date of its presentation nor upon the prescription of a physician not known to him or them to be a regular practicing physician, authorized under the laws of Texas to practice his profession, nor permit a minor to remain on his premises or his place of business, except the house or place of business of a regular pharmacist; and that he or they shall not permit any games prohibited by the laws of this State to be played, dealt or exhibited in or about such house or place of business; and that he or they shall not rent or let any part of the house or place of business or premises in which or on which they are selling such liquors or medicated bitters, to any one, for the purpose of carrying on any business in violation of the local option laws, or the penal laws of the State; and that he or they shall not adulterate the liquors or medicated bitters sold by him or them, nor knowingly sell or give away such adulterated liquors; and that he or they shall

keep an open, orderly house, and shall not use any screen or other device for the purpose of or which shall obstruct the view through the door or doors opening out on the street or alley; which said bond shall be filed in the office of the county clerk of the county where such business is carried on, and recorded by him in a book to be kept for that purpose; and for recording same he shall receive a fee of seventy-five cents. For every breach or violation of any of the provisions of said bond, the person, firm, corporation or association of persons, and the sureties on said bond, shall be liable in damages to any person, firm, corporation or association of persons injured thereby. In addition to the proceedings by parties sustaining damages by the violation, it shall be the duty of the county and district attorneys to institute suit in the name of the State of Texas for each and every infraction or violation thereof, for the use and benefit of the county; and the sum of two hundred and fifty dollars shall be recovered for each infraction, against the principal and sureties on said bond, as liquidated damages; which said sum shall be paid into the county treasury and become a part of the road fund of said county. Said bond shall not be void on the first recovery, but may be sued upon for each infraction thereof until the full penal sum named therein shall be exhausted. If said bond shall be exhausted, or become in danger of being exhausted by suits, said person, firm, corporation or association of persons shall be required to execute another bond; notice of such requirement shall be given by the county judge of the county, and such parties shall have ten days after notice to comply, and upon failure to do so shall be subject to all the pains and penalties from the time such notice was given as if no bond had been given in the first instance; provided, that, in case the county judge shall fail to give the notice herein required, then any citizen of the county, over the age of twenty-one years, may do so; and in case of failure to execute another bond within the time required, as above set forth, said person may bring suit in the district court of the county to require such person, firm, corporation or association of persons to execute a new bond; provided, further, that, in case the sureties on such bond shall become insolvent, or found to be insolvent after the execution of such bond, it shall be the duty of the county judge of the county to require of them a new bond, the same as above set forth; and, in case of his failure to do so, any citizen, as above set forth, may proceed in the district court aforesaid to compel them to execute such bond; and in case the insolvency of said sureties or either of them is established, which shall be done under the rules of evidence governing other like cases, or in case it is shown that said bond

is exhausted or in danger of being exhausted by suit, said court shall enter up its judgment requiring said parties to enter into a new bond within ten days from the date of the judgment, and adjudge the cost against defendants, and assess a reasonable attorney's fee against them as cost. In case of an appeal from such judgment, the bond shall be in an amount sufficient to cover all costs and damages, to be fixed by the judge trying the cause; and, in addition to the conditions now required in appeal bonds, be conditioned further to pay all damages occasioned by the breach or violation of the local option and penal laws of the State from the date of the institution of the suit until the final termination of such suit. In case appellants are cast in the suit and the same is finally determined against him or them, said appeal bond may be sued upon and recoveries had the same as provided in this chapter and article for suits and recovery on the original bond; provided further, that, when suit is instituted hereunder by a citizen, the suit shall be prosecuted without bond for cost or appeal bond. [R. S. Art. 7475.]

In an action on a prescription liquor dealer's bond, the court properly charged that a sale made on a prescription bearing the same number of another prescription, given by the same physician, and dated during the same year, was a violation of the bond, whether given to the same or different persons. *Edgar v. State*, 46 C. A. 171, 102 S. W. 439.

CHAPTER X.

TAX ON DEALERS IN NON-INTOXICATING MALT LIQUORS, COLD STORAGE AND C. O. D. SHIPMENTS.

(From Chapters 7, 8 and 9, Title 126, R. S.)

	SEC.		SEC.
Tax on Dealers in Non-Intoxicating Malt Liquors.....	215	Application for License—Procedure Necessary	220
Application for License to Sell Non-Intoxicants to State What, Must Be Paid in Advance.....	216	County Clerk to Report All Such Licenses Issued	221
County Clerk Required to Report, Licenses Issued	217	Amount of Occupation Tax on Handling Liquors C. O. D.....	222
Tax on Persons Soliciting Orders or Operating Cold Storage in Dry Territory	218	Penalty for Failure to Pay Tax Provided for by Law.....	223
Amount of Tax for Keeping Cold Storage	219	No Person or Company Required to Maintain Such Office.....	224
		Invalidity of Part of Law Not to Affect Whole of Same.....	225

215. Tax on Dealers in Non-Intoxicating Malt Liquors.—There is hereby levied upon all firms, persons, associations of persons and corporations, selling non-intoxicating malt liquors, an annual State tax of two thousand dollars. Counties, incorporated cities and towns where such sales are made may each levy an annual tax of not exceeding one thousand dollars upon all such persons, firms or corporations; provided, that this article shall not prevent the sale of such proprietary remedies as “malt extract,” “malt medicine” and “malt and iron” manufactured and used exclusively as medicine and not as a beverage, when sold upon the prescription of a regular practicing physician; provided, further, that not more than one sale shall be made upon any one prescription. [R. S. Art. 7476.]

Acts 1907, Chap. 112, imposing an occupation tax, is unconstitutional, in that the taxes levied are not equal and uniform. *Ex parte Woods*, 52 Cr. R. 575, 108 S. W. 1171-1179, 16 L. R. A. (N. S.) 450, 124 Am. St. Rep. 1107.

This chapter is a valid exercise of the State's police power, and not invalid as imposing a prohibitive tax, and as preventing pursuit of a lawful business. *Ex parte Townsend*, 64 Cr. R. 350, 144 S. W. 628.

This chapter is not invalid as imposing different rates in different parts of the State from those established by Chapter 5, which applies only to the sale of intoxicating liquors. *Id.*

216. Application for License to Sell Non-Intoxicants to State What; Must Be Paid in Advance.—Each person and each firm and

each corporation and each association of persons desiring to engage in the business mentioned in the preceding article, before engaging in same, shall file with the county clerk of the county in which the business is proposed to be pursued an application in writing for a license to engage therein and shall state the place or house in which said business is to be pursued, and, if within the corporate limits of any incorporated city or town, that fact shall be so stated; and any such person or firm or corporation or association of persons shall pay to the tax collector of the county the entire amount of annual tax levied by the State and the entire amount of the annual tax upon such business as may be levied by the commissioners' court of said county, and, if the business is to be pursued in an incorporated city or town, shall pay to the collector of taxes of such city or town the tax that may be levied on such business by said city or town; and all such taxes shall be paid in advance; and no license shall be issued by the county clerk until the person, or firm, or corporation, or association of persons, applying therefor shall exhibit receipts showing the payment of all taxes levied and authorized by this chapter; and the county clerk shall be entitled to charge a fee of twenty-five cents for the issuance of such license; and it shall be unlawful to carry on business under said license in more than one place at the same time, or in any place other than that named in said application for said license, unless the party carrying on said business shall first file with the county clerk of the county in which said business is carried on a written statement showing such change of place of business. [R. S. Art. 7477.]

See *Ex parte Townsend*, 64 Cr. R. 350, 144 S. W. 628.

217. County Clerk Required to Report Licenses Issued.—The county clerk is hereby required to make report of all licenses issued by authority of this chapter, as in other cases. [R. S. Art. 7478.]

218. Tax on Persons Soliciting Orders or Operating Cold Storage in Dry Territory.—In all counties, justice precincts, towns, cities or other subdivisions of a county, where the qualified voters thereof have by a majority vote determined that the sale of intoxicating liquors shall be prohibited therein, there is hereby levied upon all firms, persons, associations of persons and corporations that pursue the business of selling, or offering for sale, any intoxicating liquors by soliciting or taking orders therefor in any quantities whatsoever, in any such county, justice precinct, town, city, or other subdivision of a county, an annual State tax of four thousand dollars; and each

county and also each incorporated city or town may levy an annual tax not exceeding two thousand dollars in any such county or incorporated city or town where such business is pursued. [R. S. Art. 7479.]

This chapter is general, and not local or special, within the prohibition of Const. Art. 3, Secs. 56, 57. *Edmanson v. State*, 64 Cr. R. 413, 142 S. W. 887.

And is a valid exercise of the police power. *Id.*

And is not constitutional as levying an excessive tax on the occupation. *Id.*

And does not contravene Const. Art. 8, Sec. 2, requiring all occupation taxes to be equal and uniform on the same class of persons within the limits of the authority levying the tax. *Id.*

See also *Patterson v. State*, 90 S. W. 31.

219. Amount of Tax for Keeping Cold Storage.—In all counties, justice precincts, towns, cities or other subdivisions of a county, where the qualified voters thereof have by a majority vote determined that the sale of intoxicating liquors shall be prohibited therein, there is hereby levied upon all firms, persons, associations of persons and corporations that pursue the business of keeping, maintaining or operating what is commonly known as a "cold storage," or any place by whatever name known or whether named or not, where intoxicating or non-intoxicating liquors or beverages are kept on deposit for others, or where any such liquors are kept for others under any kind or character of bailment, an annual tax of two thousand dollars. Counties, incorporated cities and towns, where such business is located, may each levy an annual tax of not exceeding one thousand dollars upon each such place so kept, run, maintained or operated. [R. S. Art. 7480.]

See *Barnes v. State*, 170 S. W. 548.

The words "non-intoxicating liquors or beverages," in this article, considered in connection with the evil intended to be corrected, and with the history of the legislation upon the same subject, have references to alcoholic or spirituous fluids, either distilled or fermented, and do not include liquids such as water, milk, etc. *Ex parte Flake* (Cr. App.), 149 S. W. 146.

This article is authorized by State Constitution, which provides a mode whereby it may be determined whether the sale of intoxicating liquors shall be prohibited in a given territory, since such provision implies that it is within the power, and is the duty of the Legislature to enact all laws necessary to enforce prohibition in localities where it is adopted. *Ex parte Flake* (Cr. App.), 149 S. W. 146.

And does not violate the Constitution, Art. 3, Sec. 35, providing that no statute shall contain more than one subject, though it provides for the

regulation and prohibition of the liquor traffic in prohibition territory; such object and purpose constituting but one subject. *Id.*

And is a police regulation, and not a revenue measure, though incidentally revenue may be derived from its enforcement. *Id.*

The classification by this article is reasonable, and based on what is for the best interest of the State and the welfare of its citizens. *Id.*

And being within the police power inherent in the State, does not violate the Constitution, U. S., Amend. 14. *Id.*

The fact that the license prescribed by this article is so large as to be prohibitive of the business, does not render it violative of the Constitution, Art. 1, Sec. 19, by depriving citizens of the State of their property rights, privileges, and immunities. *Id.*

This article bears equally upon all citizens seeking to do such cold storage business in local option territory, and hence does not deprive citizens of their equal right to transact business. *Id.*

The fact that this article applies only to local option territory does not render it violative of the Constitution, Art. 8, Secs. 1, 2, providing that taxes shall be uniform throughout the State. *Id.*

One charged with violating this article, by storing "intoxicating liquors" in local option territory without having obtained a license, could not complain or raise the question as to what other liquors the statute does or does not apply. *Id.*

220. Application for License—Procedure Necessary.—Each person and each firm and each corporation and each association of persons desiring to engage in the business mentioned in Articles 7479 and 7480 of this chapter in said local option territory, before engaging in same shall file with the county clerk of the county in which the business is to be pursued an application in writing for a license to engage therein, and shall state the county, or portion of the county, in which the business is to be pursued; and, if within the corporate limits of any incorporated city or town, that fact shall be so stated; and any such person or firm or corporation or association of persons shall pay to the tax collector of the county the entire amount of the annual tax levied for the State, and the entire amount of the annual tax upon such business as may be levied by the commissioners' court of said county, and, if the business is to be pursued in an incorporated city or town, shall pay to the collector of taxes of such city or town the tax that may be levied on such business by said city or town; and all such taxes shall be paid in advance; and no license shall be issued by the county clerk until the person or firm or corporation or association of persons applying therefor shall exhibit receipts showing the payment of all taxes levied and authorized by this chapter, and the county clerk shall be entitled to charge a fee of twenty-five cents for the issuance of such license. [R. S. Art. 7481.]

221. County Clerk to Report All Such Licenses Issued.—The county clerk shall be and is hereby required to make report of all licenses issued by authority of this chapter as in other cases. [R. S. Art. 7482.]

222. Amount of Occupation Tax on Handling Liquors C. O. D.—Any person, firm or corporation doing business in this State shall, at each office or place kept, operated or maintained by such person, firm or corporation at which intoxicating liquors legally deliverable are delivered upon payment of purchase money therefor, commonly designated as shipments C. O. D., pay annually for each office or place so kept, an annual occupation tax to the State of Texas of five thousand dollars; and any county or any incorporated city or town, wherein such office or place is located, may levy an annual occupation tax upon such person, firm or corporation herein referred to for each of said offices, not to exceed one-half of the amount hereby levied by the State, such tax to be due and payable annually. [R. S. Art. 7483.]

This statute is an unconstitutional burden on, and interference with interstate commerce, and therefore invalid. *Rosenburger v. Pacific Express Co.*, 241 U. S. 48 (October Term, 1915).

This chapter is valid as a police regulation of the handling of liquors, since the Legislature had authority to abrogate the C. O. D. feature of the liquor traffic, or impose any burden thereon which tended to prevent the evasion of the local option statutes. *Craddock & Co. v. Wells-Fargo Co. Express* (Civ. App.), 125 S. W. 59.

And is not a violation of the Constitution, Art. 8, Secs. 1, 2, providing that taxation and all occupation taxes shall be equal and uniform upon the class of subjects within the limits of the authority levying the tax, since the delivery of liquor C. O. D. constitutes a business in itself, and is not necessarily a part of an express company's business. *Id.*

This chapter is a revenue law and not prohibited by the Constitution, Art. 3, Sec. 48, providing that the Legislature shall not levy taxes or impose burdens on the people except to raise revenue sufficient for the economical administration of the government. *Id.*

This chapter was sufficient to warrant an express company in refusing to carry liquor in that manner, since it could either pay the license tax or refuse to carry the liquor C. O. D. *Id.*

Where an express company had contracted to carry packages of intoxicating liquor C. O. D. for plaintiff, and the Legislature, by this chapter, rendered this business unlawful, the express company was thereby excused from collecting the price, and plaintiff, on ordering the goods returned, cannot recover the return charges paid on such packages on the ground that defendant's failure to perform the contract of transportation deprived plaintiff of all the benefit thereunder. *Id.*

223. Penalty for Failure to Pay Tax Provided for by Law.—The maintaining or operating such office or offices, place or places, by any person, firm or corporation in this State without paying the occupation tax required in Section 1 [Article 7483] of this chapter shall subject such person, firm or corporation so operating and maintaining such office or offices, place or places, to pay to the State of Texas the sum of fifty dollars, and to the county and any incorporated city or town in which said offices or places are located, each the sum of fifty dollars for each day such office or offices, place or places, may be maintained or operated, and for each office or place so operated; and the State or county, or any incorporated city or town, may sue for and recover, either jointly or severally, each the said sum, for each day that each of said offices or places may be maintained and operated without prepayment of the aforesaid occupation tax. [R. S. Art. 7484.]

224. No Person or Company Required to Maintain Such Office.—No person, firm or corporation shall be required to keep, operate or maintain any office at which intoxicating liquors are deliverable upon the payment of the purchase price thereof, nor shall any such person, firm or corporation be compelled to receive, transport or deliver any intoxicating liquors, the purchase price of which, or any part thereof, is to be paid said person, firm or corporation on delivery. [R. S. Art. 7485.]

225. Invalidity of Part of Law not to Affect Whole of Same.—In the event any article of this chapter should be attacked, or for any reason held invalid, such action shall not affect the force or legality of the other articles of this chapter. [R. S. Art. 7486.]

CHAPTER XI.

ON FAILURE TO PAY TAX PERSONS SELLING LIQUOR MAY BE ENJOINED—POWERS OF CITIES AND TOWNS.

(R. S. Arts. 4674 to 4688 and 830 to 832.)

	SEC.		SEC.
Unlawful Sale, etc., of Liquor		Intoxicating Liquor Without	
May Be Enjoined.....	226	License	236
Procedure as in Other Cases.....	227	Use of Premises for Gaming En-	
Persons Compelled to Testify.....	228	joined	237
Cumulative Remedy	229	Parties and Proceedings.....	238
Sale of Intoxicating Liquors in		Suits, by Whom Instituted.....	239
Local Option Territory En-		Procedure in Other Injunction	
joined	230	Cases	240
Who Made Party Defendant.....	231	Cities May Restrain, etc., the Sale	
By Whom Prosecuted.....	232	of Intoxicating Liquors for	
Same Proceedings as in Other		Evading Tax	241
Cases, Except	233	Cities May Prevent Sale of Liquor	
General Reputation Evidence.....	234	in Certain Places.....	242
Injunction Against Soliciting Or-		Cities May Close Drinking	
ders in Local Option Districts..	235	Houses, etc., on Sunday.....	243
Injunction Against Sale of Non-			

226. Unlawful Sale, Etc., of Liquors May Be Enjoined.—Any person, firm or corporation in this State who may engage in, pursue, carry on, or maintain, any of the following described occupations or callings under the circumstances and conditions herein described, are hereby declared to be the creators and promoters of a public nuisance, and may be enjoined at the suit either of the county or district attorney in behalf of the State, or of any private citizen thereof.

1. Any person, firm or corporation who may engage in or pursue the business of selling intoxicating liquor without having first procured the necessary license and paid the taxes required by law.

2. Any person, firm or corporation who may, as owner, proprietor or agent, establish, manage or conduct any public place or business where intoxicating liquors are stored, kept, drunk, sold or dispensed within any county or precinct within this State, wherein the sale of intoxicating liquor has been prohibited by law.

3. Any person, firm or corporation who may, under the pretense of selling or dispensing intoxicating liquor on prescription, in any county or precinct in this State wherein the sale of intoxicating liquor has been prohibited by law, and who in thus selling or dispensing such intoxicating liquor violates the law; provided, if, on final hearing, such injunction is sustained, the license of such person

shall be revoked, and he shall not thereafter be permitted to again pursue such business for a period of one year.

4. Any person who, as a physician, follows the business of writing and issuing prescriptions to persons contrary to law, prescribing the use of intoxicating liquors to such persons, in any county or precinct in this State wherein the sale of intoxicating liquor has been prohibited by law.

5. Any person who shall engage in the business of peddling or "bootlegging" intoxicating liquor in any county or precinct in this State wherein the sale of intoxicating liquor has been prohibited by law.

6. Any person who canvasses or solicits orders for the sale of intoxicating liquor from persons other than those engaged in the lawful sale of the same in any county or precinct in this State wherein the sale of intoxicating liquor has been prohibited by law. [Acts 1907, p. 166, Sec. 1.]

227. Procedure as in Other Cases.—The procedure in all cases brought under the preceding article shall be the same as in other suits for injunction, as nearly as may be; provided, that, when the suit is brought in the name of the State by any of the officers aforesaid, the petition for injunction need not be verified. [Id. Sec. 2.]

228. Persons Compelled to Testify.—Any person may be compelled to testify and give evidence in any proceeding under the two preceding articles, but such evidence shall not be used against such person in any criminal prosecution in this State. [Id. Sec. 4.]

229. Cumulative Remedy.—The foregoing remedy by injunction shall not be held to supersede or repeal any law now in force correcting the evils defined, but shall be cumulative of all such laws. [Id. Sec. 3.]

230. Sale of Intoxicating Liquors in Local Option Territory Enjoined.—The actual, threatened or contemplated use of any place, room, premises, building, or part thereof in any county, justice precinct, town or subdivision of a county, as may be designated by the commissioners' court of said county, in which the sale of intoxicating liquors has been prohibited under the laws of this State, for the purpose of selling intoxicating liquor in violation of law, or in which to keep, store or deposit any intoxicating liquor for the purpose of being sold in violation of law, or the possession of, or having under control or management at any such place, of any intoxicating liquor for the purpose and with the intent to sell the same in violation of law, shall be enjoined at the suit of the State, or of any citizen thereof. [Acts 1910, 3d S. S., p. 35, Sec. 11.]

231. Who Made Party Defendant.—Any person, company, corporation or association of persons who may so use, or be about to use, or who may aid or assist in any such actual or threatened use, of such place, room, premises, building or part thereof, or any person who may have, possess or manage for any such purpose any intoxicating liquor, or who may aid or assist another in thus possessing, having or maintaining or managing intoxicating liquors for such purpose, may be made a party defendant to such suit. [Id. Sec. 12.]

232. By Whom Prosecuted.—The Attorney General and the several district and county attorneys shall institute and prosecute all such injunction suits that the said Attorney General or district or county attorney may deem necessary; provided, that such suit may be brought and prosecuted by any one of said officers; and provided, further, that nothing contained herein shall prevent said injunction from issuing at the suit of any citizen of this State who may sue in his own name, and any such citizen shall not be required to show that he is personally injured by reason of the matters and things of which he complains. [Id. Sec. 13.]

233. Same Proceedings as in Other Cases, Except.—The procedure in all cases brought hereunder shall be the same as in other suits for injunction, or where injunction is sought, as near as may be; provided, that where the suit is brought in the name of the State by any of the officers aforesaid, the petition therefor need not be verified, nor shall the State be required to pay or give security for costs or on appeal; and appeal by the State shall be perfected by giving notice thereof in open court, and all such cases shall have precedence on the docket of all courts where pending. [Id. Sec. 14.]

234. General Reputation Evidence.—In any proceeding under the provisions of the three preceding articles evidence of the general reputation of the house, place, building, premises or part thereof, or of the business, occupation or pursuit of the defendant involved, may be admitted in evidence as tending to prove the allegation of the complaint; provided, that in any investigation no person shall be exempt from giving testimony therein, but the testimony given by witness shall not be used against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him. [Id. Sec. 15.]

235. Injunction Against Soliciting Orders in Local Option Districts.—The actual, threatened or contemplated pursuit of any such business mentioned in Articles 7479 and 7480 of the title, "Taxation," in any local option territory, by any person or firm or as-

sociation of persons or corporations, without there having first been procured a license therefore as provided in said articles, shall be enjoined at the suit of the State at the instigation of either the county or district attorney, or at the suit of any individual citizen of the county where the business is, or is about to be, pursued; and it shall not be necessary for any citizen to show that he has any pecuniary interest involved; and the State shall not be required to give security for cost, and all the rules of evidence, practice and procedure that pertain to courts of equity generally, or that exist by virtue of any law of this State, may be invoked and applied in any injunction proceeding instituted hereunder. [Acts 1909, p. 53, Sec. 6.]

236. Injunction Against Sale of Non-Intoxicating Liquor Without License.—The actual, threatened or contemplated pursuit of any such business mentioned in Article 7476 of the title, "Taxation," by any such person or firm or association of persons or corporations, without there having first been procured a license therefor as provided in said article, shall be enjoined at the suit of the State at the instigation of either the county or district attorney, or at the suit of any individual citizen of the county where the business is, or is about to be, pursued; and it shall not be necessary for any citizen to show that he has any pecuniary interest involved, and that the State shall not be required to give security for cost, and all the rules of evidence, practice and procedure that pertain to courts of equity generally, or that exist by virtue of any law of this State, may be invoked and applied in any injunction proceeding instituted hereunder. [Acts 1909, p. 51. Amended Act 1909, 2d S. S., p. 397.]

237. Use of Premises for Gaming Enjoined.—The habitual use, actual, threatened or contemplated, use of any premises, place, building or part thereof, for the purpose of gaming or of keeping or exhibiting games prohibited by the laws of this State, shall be enjoined at the suit either of the State or of any citizen thereof. [Acts 1905, p. 372.]

238. Parties and Proceedings.—Any person who may so use, or who may be about to use, or who may aid or abet any other person in the use of any premises, place or building or part thereof, may be made a party defendant in such suit. [Id. Sec. 1.]

239. Suits by Whom Instituted.—The Attorney General and the several district and county attorneys shall institute and prosecute all suits under the two preceding articles that said Attorney General or such district or county attorney may deem necessary to enjoin such use; provided, that such suit may be brought and prosecuted by any one of said officers; and provided, further, that nothing in

the above proviso contained shall prevent such injunction from issuing at the suit of any citizen of this State who may sue in his own name, and such citizen shall not be required to show that he is personally injured by the acts complained of. [Id. Sec. 2.]

240. Procedure in Other Injunction Cases.—The procedure in all cases brought hereunder shall be the same as in other suits for injunction, as near as may be; provided, that when the suit is brought in the name of the State by any of the officers aforesaid, the petition for injunction need not be verified. [Id. Sec. 3.]

241. Cities May Restrain, Etc., the Sale, Etc., of Intoxicating Liquors for Evading Tax.—To restrain, regulate and prohibit the selling or giving away indirectly to evade a tax or penalty, of intoxicating or malt liquors by any person within the city, except by persons duly licensed; to forbid or punish the selling or giving away of any intoxicating or malt liquors to any minor, apprentice or habitual drunkard. [Acts of 1875, p. 256, Sec. 46.]

242. Cities May Prevent Sale of Liquor in Certain Places.—The city council shall have full power, by ordinance, to prevent the sale or giving away of any intoxicating liquors in any house or other place where theatrical or dramatic representations are given, and also to prevent intoxicating liquors of any description from being brought into any house or place where such representations are given, under any pretext whatever. [Id. Sec. 48.]

243. Cities May Close Drinking Houses, Etc., on Sunday.—To close drinking houses, saloons, bar-rooms, beer saloons, and all places or establishments where intoxicating or fermented liquors are sold, on Sundays, and prescribe hours for closing them, and also all places of amusement and business. [R. S. 1911.]

CHAPTER XII.

TAXES TO BE LEVIED ON PROPERTY INHERITED.

(From Chapter 10, Title 126, R. S.)

	SEC.		SEC.
Property Which May Be Inherited Subject to Taxation.....	244	aries Until Tax Paid.....	251
Property Passing in Two or More Estates, Tax to Be Levied.....	245	Tax Charged on Real Estate, When	252
Property Bequeathed to Executor or Trustee in Lieu of Commission, Taxed When.....	246	Tax to Be Paid Within Thirty Days to Collector.....	253
Inventory of Property Inherited to Be Filed When; Penalty.....	247	Duty of Tax Collector to Sue for, When	254
Duty of Comptroller to Contract for Collection	248	Duty of Tax Collector to Pay to State Treasurer.....	255
Appraisers Appointed; Notice to Be Given, etc.	249	Tax Deposited to Credit of General Fund	256
County Judge to Regulate Inheritance Tax	250	Tax May Be Refunded, When.....	257
Property Withheld from Beneficiaries		Final Account Not to Be Allowed Until Tax is Paid.....	258
		Appointment of Administrator Dispensed With	259

244. Property Which May Be Inherited Subject to Taxation.—

All property within the jurisdiction of this State, real or personal, corporeal or incorporeal, and any interest therein, whether belonging to inhabitants of this State or not, which shall pass absolutely or in trust by will, or by the laws of descent of this or any other state, or by deed, grant, sale or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall upon passing to or for the use of any person except the father, mother, husband, wife or direct lineal descendants of the testator, intestate, grantor or donor, or any public corporation or charitable, educational or religious organization within this State when such bequest, gift or devise is to be used for charitable, educational or religious purposes within this State, be subject to a tax for the benefit of the State, as follows:

1. If passing to or for the use of a lineal ascendant or a brother or sister, or a lineal descendant of a brother or sister, the tax shall be two per cent on any value in excess of two thousand dollars, and not exceeding ten thousand dollars; two and one-half per cent of any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; three per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; three and one-half per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars;

four per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars; and five per cent of any value in excess of five hundred thousand dollars.

2. If passing to or for the use of an uncle or aunt, or a lineal descendant of an uncle or aunt of the decedent, the tax shall be three per cent on any value in excess of one thousand dollars, and not exceeding ten thousand dollars; four per cent on any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; five per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; six per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; seven per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars, and eight per cent on any value in excess of five hundred thousand dollars.

3. If passing to or for the use of any other person, natural or artificial, the tax shall be four per cent of any value in excess of five hundred dollars, and not exceeding ten thousand dollars; five and one-half per cent on any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; seven per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; eight and one-half per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; ten per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars, and twelve per cent on any value in excess of five hundred thousand dollars. [R. S. Art. 7487, Act 1907.]

When a person dies, leaving a lawful will, all of his estate, devised or bequeathed by such will, shall vest immediately in the devisee or legatee, and all the estate of such person not devised or bequeathed shall vest immediately in his heirs at law, but all of such estate, except such as may be exempt by law, shall be subject to the debts of the deceased. Ruling of Attorney General, p. 645, 1914-16.

The right of the State to an inheritance tax accrues at the moment of death and is measured as to any beneficiary by the value at the time such property passes to him. Subsequent appreciation or depreciation is immaterial. Ruling of Attorney General, p. 645, 1914-16.

The common law rule of computing relationship being in force in this State, first cousins are related in the second degree. Ruling of Attorney General, p. 645, 1914-16.

Where a testator bequeathed to his kindred by blood within the first and second degrees the sum of \$5000 each, the relatives of the deceased commonly known as first cousins, would take under the will and an inheritance tax accrued in favor of the State at the moment of the death of the testator, and the State would be entitled thereto, although such distributees compromised litigation and received from the estate only the sum of \$3000

each. Ruling of Attorney General, p. 645, 1914-16.

Revised Civil Statutes of 1911, Articles 3235 and 7487. Ruling of Attorney General, p. 645, 1914-16.

245. Property Passing Into Two or More Estates, Taxes to Be Levied.—If the property passing as aforesaid shall be divided into two or more estates, as an estate for years or for life and a remainder, the tax shall be levied on each estate or interest separately according to the value of the same at the death of the decedent. The value of estates for years, estates for life, remainders and annuities shall be determined by the "Actuaries' Combined Experience Tables," at four per cent compound interest. [R. S. Art. 7488.]

Under Article 2 of the Revised Statutes, entitling adopted children to the same right as the legal heir of the party adopting, and Article 7487, the Inheritance Tax Law, property passing under testator's will to an adopted child is exempt. *State v. Yturria* (T. C. A.), 189 S. W. 291.

246. Property Bequeathed to Executor or Trustee in Lieu of Commission, Taxed When.—If a testator bequeaths or devises to his executor or trustee property in lieu of the latter's commission, the value of such property in excess of reasonable compensation, as determined by the county judge on his own motion, or on the application of any officer on behalf of the State, shall be subject to taxation under this chapter. [R. S. Art. 7489.]

247. Inventory of Property Inherited to Be Filed When; Penalty.—Every executor, administrator and trustee of the estate of a decedent leaving property subject to taxation under this chapter, whether such property passes by will or by the laws of descent or otherwise, shall, within three months after his appointment, make and file an inventory thereof in the county court having jurisdiction of the estate of the decedent. Any executor, administrator or trustee, refusing or neglecting to comply with the provisions of this article, shall be liable to a penalty not exceeding one thousand dollars, to be recovered in an action brought in behalf of the State by the district or county attorney upon notice from the judge of the county court. [R. S. Art. 7490.]

248. Duty of Comptroller to Contract for Collection.—The Comptroller of Public Accounts of the State of Texas is hereby authorized and empowered, and it is made his duty to appoint and contract with some suitable person or persons whose duty it shall be to look specially after, sue for and collect the taxes provided by this chapter; such person in no event to receive under such contract more than ten (10) per cent of the amount of such taxes collected here-

under, as compensation. It shall be the duty of such person, so contracted with, to make written report to the county judge of each county in which he may be appointed and employed to assist in the enforcement of this law, of each estate upon which such tax may be due, or may become due, as soon as possible after the death of any person owning such estate. Such report shall state the probable value of such estate, its character and location, if known, and the names of the persons known to be interested therein.

The amount of compensation due such person shall be paid by the collector of taxes out of the taxes collected on property belonging to such estate, and such payment shall be deducted from said taxes by said collector and reported to the Comptroller.

It shall be the further duty of such person to aid in every possible way in the collection of such taxes.

It shall be the duty of the county judge of said county upon his own motion or petition of such appointee of said Comptroller, to appoint an administrator of every estate subject to taxation under the provisions of this chapter where no application for letters testamentary or of administration thereon is made within three (3) months after the death of the person owning such estate taxable hereunder. The person appointed by the said Comptroller may represent the State in any proceeding necessary under the provisions of this chapter to enforce the collection of such taxes but without other compensation than as provided in his original employment. [Acts 1917, p. 377, amending Art. 7491.]

NOTE.—In a recent ruling by the Attorney General the State Comptroller was advised that the above Act of the Legislature of 1917, relating to the employment of special inheritance tax collectors was, in the opinion of his office, unconstitutional and invalid.

249. Appraisers Appointed; Notice to Be Given, Etc.—Said tax shall be assessed upon the actual or market value of the property. The judge of the county court having jurisdiction of the estate of the decedent shall, as often as and whenever occasion may require, appoint two competent disinterested persons as appraisers to fix the value of property subject to said tax. The appraisers, being first sworn, shall forthwith give notice to all persons known to have a claim or interest in the property to be appraised, including the executor, administrator or trustee, and the collector of taxes of the county, of the time and place when they will appraise the same. At such time and place they shall appraise such property at its actual or market value at the time of the death of the decedent, and shall thereupon make report thereof in writing to said county judge,

who shall file such report. Each appraiser shall be paid, on the certificate of the county judge, two dollars for each day employed in such appraisal, together with his actual necessary expenses incurred therein, which payments shall be made by the collector of taxes out of any moneys in his hands received under this chapter; provided, however, that upon the agreement of the parties interested to dispense with the appointment of appraisers, the county judge shall himself appraise the property and make and file a report thereof. If the same decedent shall leave property subject to this tax to more than one person, a separate appraisal and report shall be made for the property of each person. [R. S. Art. 7492.]

250. County Judge to Calculate Inheritance Tax.—Immediately upon the filing of the report of the appraisement, the county judge shall calculate and determine the amount of tax due on such property under this chapter, and shall in writing certify such amount to the collector of taxes, to the executor, administrator or trustee, and to the person to whom or for whose use the property passes. Said tax shall be a lien upon such property from the death of decedent until paid, and shall bear interest from such death until paid, unless payment shall be made within six months after such death, in which case no interest shall be charged. [R. S. Art. 7493.]

251. Property Withheld From Beneficiaries Until Tax Paid.—If such property be in the form of money, the executor, administrator or trustee shall deduct the amount of the tax therefrom before paying it to the party entitled thereto; if it be not in the form of money, he shall withhold the property until the payment by such party of the amount of tax; in any case the executor, administrator or trustee shall be liable for the amount of the tax and shall have the right, in case of neglect or refusal after due notice of the party entitled to the property to pay such amount, to sell, at public sale, after due notice to such party, the property, or so much thereof as may be necessary. Out of the sum realized on such sale, the executor, administrator or trustee shall deduct the amount of the tax and the expenses of the sale, and shall pay the balance to the party entitled thereto. [R. S. Art. 7494.]

252. Tax Charged on Real Estate, When.—Whenever any legacy subject to said tax shall be charged upon or payable out of real estate, the heir or devisee, before paying the legacy, shall deduct the amount of the tax therefrom, and pay the amount so deducted to the executor, administrator or trustee; the amount of the tax shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor or trustee in the

same manner as the payment of the legacy itself could be enforced. [R. S. Art. 7495.]

253. Tax to Be Paid Within Thirty Days to Collector.—All taxes received under this Act by any executor, administrator or trustee, shall be paid by him within thirty days thereafter to the collector of taxes of the county whose county court has jurisdiction of the estate of the decedent. Upon such payment, the collector shall make duplicate receipts thereof; he shall deliver one to the party making payment, the other he shall send to the Comptroller of Public Accounts, who shall charge the collector with the amount thereof, and shall countersign and affix his seal of office to such receipt and transmit same to the party making payment. [R. S. Art. 7496.]

254. Duty of Tax Collector to Sue for, When.—In case such tax shall not be paid to the collector of taxes within six months after the county judge has notified the amount thereof as hereinbefore provided, the collector shall commence an action to recover the amount of such tax against the executor, administrator or trustee, and the party to whom or for whose use the property has passed; provided, that the county judge may by certificate to the collector extend such time of payment whenever the circumstances of the case require. [R. S. Art. 7497.]

255. Duty of Tax Collector to Pay to State Treasurer.—The collector of taxes of each county shall, on or before the fifteenth day of each month, pay to the State Treasurer all taxes received by him under this law before the first day of that month, deducting therefrom all lawful disbursements made by him under this Act, and also his compensation at the rate of one per cent of all taxes collected under this Act. [R. S. Art. 7498.]

256. Tax Deposited to Credit of General Fund.—The moneys received by the State Treasurer under this chapter shall be deposited in the State treasury to the credit of the fund now there existing and known as the general revenue fund. [R. S. Art. 7499.]

257. Tax May Be Refunded, When.—Whenever any debts shall be proven against the estate of a decedent after the distribution of property on which the tax has been paid, and a refund is made by the distributee, a due proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee, if still in his hands, or by the collector of taxes, if it has been paid to him. The collector shall pay such sums upon the order of the county judge out of any money in his possession under this law; and the Comptroller of Public Accounts shall credit the collector with all sums so paid out by him. [R. S. Art. 7500.]

258. Final Account Not to Be Allowed Until Tax Is Paid.—No final account of an executor, administrator or trustee shall be allowed by the county judge, unless such account shows and said judge finds that all taxes imposed under this law on any property or interest passing through his hands as such have been paid; and the receipt of the collector of taxes for such taxes shall be the proper voucher for such payment. [R. S. Art. 7501.]

259. Appointment of Administrator Dispensed With.—If for any reason administration of the estate of a decedent, leaving property subject to taxation under this law, shall not be necessary in this State, except in order to carry out the provisions of this chapter, it shall be in the discretion of the county judge, upon the filing of a satisfactory inventory of the taxable property by the trustee or owner, to dispense with the appointment of an administrator. Upon the filing of such inventory, the appraisement and other proceedings required by this chapter shall be had as in other cases. [R. S. Art. 7502.]

CHAPTER XIII.

WHAT PROPERTY IS SUBJECT TO TAXATION AND THE METHOD OF RENDERING THE SAME.

(From Chapter 11, Title 126, R. S.)

	Sec.		Sec.
All Property, Real, Personal and Mixed, to Be Taxed.....	260	Certain Credits and Stocks Not to Be Listed.....	275
What Real Property, for Purposes of Taxation, Includes.....	261	Rendition of Real Estate for Taxation	276
What Personal Property, for Purposes of Taxation, Includes	262	Assessment of Personal Property by Rendition by Banker, Broker, etc.	277
Various Terms and Words Legally Defined	263	Assessment of Real Estate by Banks	278
When Property to Be Rendered for Taxes	264	No Deductions on Account of Certain Indebtedness	279
Manner of Rendering Property for Taxation	265	Assessment of Property by Railroads	280
Where Property Shall Be Rendered	266	Railroads to Return Sworn Statements, When, etc.....	281
To Be Rendered in But One County	267	Assessments and Collections of Corporate Property	282
Where Live Stock Shall Be Rendered, and How	268	Assessments of Property in Owner's Name	283
Taxes Not to Be Paid Twice, etc.	269	All Taxes a Lien Upon All Property Taxed	284
Steamboats and Vessels—Where Listed	270	Leasehold Interests in Public Lands, How Rendered.....	285
Railroads, Telegraphs, etc.....	271	How Property Shall Be Valued for Taxation	286
Persons Listing Property as Agents for Others.....	272	United States Paper Money Taxable	287
Each Person Shall List Under Oath	273	To Be Assessed as Money on Hand	288
The Statement of Rendition and Its Requisites	274		

260. All Property, Real, Personal and Mixed, to Be Taxed.—All property, real, personal or mixed, except such as may be hereinafter expressly exempted, is subject to taxation, and the same shall be rendered and listed as herein prescribed. [R. S. Art. 7503.]

The essentials of a valid tax are: (1) A levy by competent authority, and (2) a valid assessment of the property upon which such tax is levied by the officer or tribunal to whom this duty is committed by law. *George v. Dean*, 47 Tex. 73.

In construing a legislative act which incorporated within city limits property used exclusively for rural purposes, it will be conclusively presumed, on a question of taxation, that the Legislature, in passing the act, determined with a view solely to the public good, the benefits to accrue to the public and to the property owner. It would be a usurpation of power by the judiciary were it to assume the right to revise the legislative

action because of the inequality of benefits resulting from municipal taxation of such property. *Norris v. City of Waco*, 57 Tex. 635.

Taxes are, within the meaning of the Constitution (Art. 8, Sec. 1), "equal and uniform," when no person or class of persons in the territory is taxed at a higher rate than are other persons in the same district upon the same value or thing, and when the objects of taxation are the same, by whomsoever owned or whatever they be. *Id.*

✓ Taxation defined. *City of Austin v. Nalle*, 102 Tex. 536, 120 S. W. 996.

The power of a State as to the mode, form, and extent of taxation of lands within its jurisdiction is limited only by the Federal Constitution. *Hutcheson v. Storrie* (Civ. App.), 48 S. W. 785.

✓ Power to tax for governmental purposes is limited by the Constitution only. *Stratton v. Commissioners' Court of Kinney County* (Civ. App.), 137 S. W. 1170.

A State may tax all property, real and personal, within its jurisdiction, irrespective of the domicile of the owner. *State v. Fidelity & Deposit Co. of Maryland*, 35 C. A. 214, 80 S. W. 544.

✓ The State can exercise its power to impose on all property within its jurisdiction and such taxes may be imposed on all property, tangible and intangible, with a permanent situs and location within the State. *Hall v. Miller* (Civ. App.), 110 S. W. 165.

• This article and Article 7509 are broad enough to include every species of property held by an agent for any person or corporation that could possibly exist. *Jesse French Piano and Organ Co. v. City of Dallas* (Civ. App.), 61 S. W. 942.

• Where a leasehold is taxed, its value should be deducted from the taxable interest of the owner. *Dougherty v. Thompson*, 71 Tex. 192.

• The effect of this article and Articles 5062, 5063, 5064 and 5065 is to subject to taxation in addition to tangible property all moneys actually belonging to the taxpayer and any excess that may exist of his credits over his indebtedness. *Griffin v. Heard*, 78 Tex. 607.

• The lease for a term of years of a city waterworks is liable for taxes on the value of the leasehold interest, and not on the value of the property leased. *State v. Taylor*, 72 Tex. 297.

"You desire to know whether taxes can be collected on lands for the period subsequent to the cancellation of the sales and prior to their reinstatement.

"You are advised that in the opinion of this department the lands were subject to taxation during the period named and that you should proceed to collect the taxes due for said period in the manner prescribed by law. When the sales were reinstated by the commissioner, their reinstatement dated back to the time of their cancellation. In other words, the act of the commissioner in reinstating the sales was nothing more than rescinding his former action in cancelling them and the effect was the same as if the cancellation had never been made. If this were not true, the purchasers would not now be entitled to the land, unless they should repurchase it from the State." Ruling of Attorney General, p. 667, 1912-14.

There shall be levied on and collected from every person, firm, company or association of persons, pursuing any of the occupations named in the following numbered subdivisions of this article, an annual occupation tax, which shall be paid annually in advance, except where herein otherwise

provided, on every such occupation or separate establishment, as follows: Ruling of Attorney General, p. 614, 1912-14.

Good faith and lack of intent to injure a party on board of assessors is immaterial in a suit seeking to enjoin the collection of taxes assessed too high. *Brown v. First National Bank of Corsicana*, 175 S. W. 1122.

The right to prospect for and remove oil and gas from the soil is a franchise taxable against the owner of the fee and not against the oil company, according to Article 7504, R. S. *Texas Co. v. Daugherty*, 176 S. W. 717, affirming 160 S. W. 129 (T. C. A.).

A conveyance of oil and gas in the earth passed such an interest in the realty as to subject it to taxation in the hands of the grantee, separate from the valuation of the land in which it is located. *Texas Co. v. Daugherty* (T. C. A.), 176 S. W. 717.

261. What Real Property, for Purposes of Taxation, Includes.—

Real property, for the purpose of taxation, shall be construed to include the land itself, whether laid out in town lots or otherwise, and all the buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all the rights and privileges belonging or in any wise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same. [R. S. Art. 7504.]

One locating two surveys under a Confederate land scrip cannot demand a patent until the land commissioner has selected one of them for the school fund, and hence until then his survey is not taxable. *Abney v. State*, 20 C. A. 101, 47 S. W. 1043.

The plain purpose of this article is to require that in assessing real estate for taxation, whether held by a natural person or a corporation, not only is the land itself included as mere land together with the improvements thereon, but also all franchises and privileges appurtenant thereto, and all the advantages for a profitable prosecution of the business to which it is appropriated. As a rule the value of improved real estate is proportional to the net income which it will yield. *State v. Austin & N. W. Ry. Co.*, 94 Tex. 530, 62 S. W. 1050.

The rendition by a corporation under the general law included its franchise to exist as a corporation and its franchise to do business in the operation of the railroad. It was not the intention of the Legislature to tax the franchise of a railroad as a property separate from its real estate. *State v. Galveston, H. & S. A. Ry. Co.*, 100 Tex. 153, 97 S. W. 71.

Minerals contained in land are property, and when severed from the land by a proper conveyance may be taxed separately from the land itself. *State v. Downman* (Civ. App.), 134 S. W. 787.

The value of a railroad is not the mere value of its right of way, road-bed, and superstructure, its depot grounds and structures thereon considered by themselves, but the value of these as an operating "going concern"; this value being in general determinable by the profits which result from its operations. The franchise of a railroad is not taxable as a property separate from its real estate; to so tax it would lead to double taxation, which is not permitted. *State v. A. & N. W. Ry. Co.*, 94 Tex. 530.

Where taxes are levied upon property under certain conditions, the levy

is not valid unless all the conditions are complied with. *Cochran v. Ken-non* (T. C. A.), 161 S. W. 67.

262. What Personal Property, for Purposes of Taxation, Includes.—Personal property shall, for the purposes of taxation, be construed to include all goods, chattels and effects, and all moneys, credit, bonds and other evidences of debt owned by citizens of the State, whether the same be in or out of the State; all ships, boats and vessels belonging to inhabitants of this State, if registered in this State, whether at home or abroad, and all capital invested therein; all moneys at interest, either within or without this State, due the person, to be taxed over and above what he pays interest for, and all other debts due such person over and above their indebtedness; all public stock and securities; all stock in turnpikes, railroads, canals and other corporations (except national banks) out of the State, owned by inhabitants of this State; all personal estate of moneyed corporations, whether the owners thereof reside in or out of this State, and the income of any annuity, unless the capital of such annuity be taxed within the State; all shares in any bank organized or that may be organized under the law of the United States; all improvements made by persons upon lands held by them, the title to which is still vested in the State of Texas, or in any railroad company, or which have been exempted from taxation for the benefit of any railroad company, or any other corporations, or any other corporation whose property is not subject to the same mode and rule of taxation as other property. [R. S. Art. 7605.]

This article was not intended to limit the broad terms of Article 7503, but was passed to remove any doubt as to the taxable character of personal property about which contention might probably arise. *Jesse French Piano & Organ Co. v. City of Dallas* (Civ. App.), 61 S. W. 946.

The object of this article was to amplify and increase the scope, if possible, of Article 7503, and not to confine taxation to the property of inhabitants (of the State). *Hall v. Miller* (Civ. App.), 110 S. W. 169

This article and the Act of 1905, levying taxes for general revenue (Acts 1905, p. 436, Chap. 8), taken together, show that the Legislature intended to enlarge the tax laws so as to embrace property which otherwise might escape taxation. Hence, vendor lien notes held in Texas for collection are taxable although owned by a non-resident. *Hall v. Miller*, 102 Tex. 289, 115 S. W. 1169.

This article and Articles 7503, 7504, subject to taxation, in addition to tangible property, all money belonging to the taxpayer and any excess that may exist of his credits over his indebtedness. *Griffin v. Heard*, 78 Tex. 607, 14 S. W. 892.

Cattle shipped into the State under bill of lading allowing their being fed therein for an indefinite period held taxable in the State while being fattened at the owner's pens. *Waggoner v. Whaley*, 21 C. A. 1, 50 S. W. 153.

Municipal bonds and securities bear a concrete form and tangible status, and constitute property which may acquire a situs for purposes of taxation other than domicile of its owner. *State v. Fidelity & Deposit Co. of Maryland*, 35 C. A. 214, 80 S. W. 544.

The term "personal property" includes bonds, notes, credits, and choses in action. *Id.*

The law requires foreign corporations engaged in the surety and guaranty business in this State to deposit with the State Treasurer, in order to be permitted to transact business here, good securities of the cash market value of \$50,000. This property, under this article, is properly subject to assessment and rendition for taxes, and to the payment of taxes thereon. The fact that the property is also subject to taxation in the State of Maryland, the domicile of the corporation owning the property, does not make the payment of taxes on it in Texas double taxation within the meaning of the law. *Id.*

Legal fiction that personal property attaches to the owner, and is subject only to laws of his domicile, does not extend to a case of property situated in another jurisdiction, which assumes control over it for taxation purposes. *Id.*

Notes given for the purchase price of land within the State and left by a non-resident owner with resident agents for collection held to have a situs within the State for purposes of taxation. *Hall v. Miller* (Civ. App.), 110 S. W. 165.

Bonds and notes owned by non-resident are taxable where they have acquired a situs within the State, and are used in the State in connection with the business carried on for the owner. *Hall v. Miller*, 102 Tex. 289, 115 S. W. 1168.

Vendor lien notes given for lands in Texas payable in Texas and held in Texas for collection are subject to taxation in Texas under this article, although the owner thereof is a non-resident, and although the money paid on the notes as they mature is withdrawn from the State. *Id.*

Personal property which has its permanent situs within the State is subject to taxation, therein, regardless of the domicile of the owner. But personal property of a non-resident only temporarily within the State is not subject to taxation. *Carmody v. Clayton* (Civ. App.), 154 S. W. 1067.

Where one who had lived within the State for more than 12 years kept his personal property there, except when away on short trips, taking it out of the State only at the time of assessment, the property had a permanent situs in the State and was subject to taxation herein, though the owner still retained his citizenship in a foreign State. *Id.*

Within the purview of the tax laws, one who has lived within a State for over 12 years, though expressing an intention at some future time to leave, is a citizen, even though he has never exercised political rights within the State, and claims to be a citizen of a foreign State. *Id.*

This article standing alone permits the deduction of all indebtedness, but this article is modified by Article 7523, which specifically designates certain classes of indebtedness which shall not be deducted. *Primm v. Fort*, 23 C. A. 605, 57 S. W. 86, 972.

And an owner of national bank stock held not entitled to deduct his indebtedness from the value of his stock for the purpose of taxation. *Id.*

Credits, such as notes, are taxable at the place of the residence of the

owner. *Ferris v. Kimble*, 75 Tex. 476; *Connor v. City of Waxahachie*, 13 S. W. 30.

Money on deposit in a bank by a receiver is subject to taxation. *Campbell v. Riviere*, 22 S. W. 993.

A bank share is not a debt due its owner, and his debts can not be deducted from it in arriving at his taxable property. *Rosenberg v. Weeks*, 67 Tex. 578; *Primm v. Fort*, 57 S. W. 89.

When a person residing in another State has an agent in this State, who conducts the business of his principal, and has notes in his hands for collection and renewal, with a view of keeping up a permanent business, the situs of the notes for taxation is in this State at the place where the agent resides. *Jesse French Piano & Organ Company v. City of Dallas*, 61 S. W. 942.

This article standing alone permits the deduction of all indebtedness, but it is modified by Article 5081, which specifically designates certain classes of indebtedness which shall not be deducted. *Primm v. Fort*, 57 S. W. 91.

A deposit subject to sight check is regarded by the tax law of this State as cash, and is not subject to offset by the liabilities of the taxpayer. *Campbell v. Wiggins*, 2 T. C. A. 1.

Securities deposited by a foreign guaranty and surety company with the State Treasurer, as required by the Acts of the Twenty-fifth Legislature, page 244, Chapter 165, held subject to taxation in Travis County. *State v. Fidelity & Deposit Co.*, 80 S. W. 544.

Taxpayers in rendering credits due them for taxation are entitled to deduct therefrom the amounts due the State by them for school lands held under contract for purchase. Opinion of Attorney General.

The intangible personal property of the ward is taxable against the guardian and at the place of the guardian's residence. Opinion of Attorney General.

If a house and contents were destroyed by fire on December 15, 1912, the same was not in existence on January 1st, and, therefore, could not be taxable, but insurance policy being in force on that date was a valid claim and credit owned and held by the assured, and was taxable as such under the law. Ruling of Attorney General, p. 631, 1912-14.

Notes owned and held by party living within the incorporated limits of a town or city are subject to taxation in such town or city, even though they may be a lien against real estate without the incorporate limits of said city. Ruling of Attorney General, p. 631, 1912-14.

The general rule is that personal property which has its permanent situs within the State is subject to taxation therein, although it belongs to a non-resident; but that which is only in the State temporarily is not subject to tax. However, personal property belonging to a non-resident, which is kept within the State, except during short intervals at the time of assessment, for a space of over 12 years, is considered to have permanent situs, and is subject to taxation therein. *Carmody v. Clayton* (T. C. A.), 154 S. W. 1067.

One who, for 12 years, has resided within the State, though expressing an intention to leave at some future time, is a citizen, although he claims to be a resident of a foreign State and has never exercised any political rights therein. *Id.*

263. Various Terms and Words Legally Defined.—The term, “money,” or, “moneys,” wherever used in this title shall, besides money or moneys, include every deposit which any person owning the same or holding in trust and residing in this State, is entitled to withdraw in money on demand.

“Credits.”—The term, “credits,” wherever used in this title, shall be held to mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due.

“Tract or Lot.”—The term, “tract or lot,” and “piece or parcel,” of real property, and piece and parcel of land, wherever used in this title, shall each be held to mean any quantity of land in possession of, owned by or recorded as the property of the same claimant, person, company or corporation.

“Singular and Plural.”—Every word importing the single number only may extend to and embrace the plural, and every word importing the plural number may be applied and limited to the singular number; and every word implying the masculine gender only may be extended and applied to females as well as males.

“Oath.”—Wherever the word, “oath,” is used it shall be held to mean oath or affirmation; and the word, “swear,” may be held to mean affirm.

“Town or District.”—The words, “town or district,” wherever used shall be held to mean village, city, ward or precinct, as the case may be.

“Value.”—The term, “true and full value,” wherever used shall be held to mean the fair market value, in cash, at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale.

“Person.”—The term, “person,” shall be construed to include firm, company or corporation. [R. S. Art. 7506.]

Deposit in bank subject to sight check is cash. *Campbell v. Wiggins*, 20 S. W. 730, 2 C. A. 1.

In prosecution for perjury for making false statement in assessing money in bank the indictment should allege that the money rendered was in said bank payable on demand as required by this article. *Parker v. State*, 44 Cr. R. 147, 69 S. W. 76.

“A party has in bank on January 1, \$5000 in money to his credit, and owes \$5,000 in taxes which are then due. The bank has instructions from him which were received early in December to pay said taxes during the absence of said party, and the bank having failed to pay same with said money before the first day of January, 1914, said money was therefore to

his credit on said date, and the same was not paid in liquidation of said taxes until after January 1, 1914, but was paid during said month of January. * * * Is said money or not subject to taxation for the year 1914?" We answer your inquiry in the affirmative. Ruling of Attorney General, p. 618, 1914-16.

264. When Property to Be Rendered for Taxes.—All property shall be listed for taxation between January 1 and April 30 of each year, when required by the assessor, with reference to the quantity held or owned on the first day of January in the year for which the property is required to be listed or rendered. Any property purchased or acquired on the first day of January shall be listed by or for the person purchasing or acquiring it. If any property has, by reason of any special law, contract or fact, been exempt or has been claimed to be exempted from taxation for any period or limit of time, and such period of exemption shall expire between January 1 and December 31 of any year, said property shall be assessed and listed for taxes as other property; but the taxes assessed against said property shall be for only the pro rata of taxes for the portion of such year remaining. [R. S. Art. 7508.]

All property owned by a person in this State on the first day of January must be listed for taxation between that date and June 1st of each year, and he is personally liable for the taxes of that year though he sells the property before the amount of such taxes has been ascertained and before payment becomes due. *Carswell v. Habberzettle*, 13 T. C. R. 399.

The owner of the property on the 1st day of January is personally liable for the taxes for that year, though he sells it before time for the collection of the taxes for that year. *Cruger v. Ginnuth*, 3 App. C. 24.

There must be a valid assessment before a right of action for taxes can accrue, under *Vernon Sayles' Statutes*, 1914, Art. 7661. *State v. Cage* (T. C. A.), 176 S. W. 928.

The assessment of the rights of an oil and gas lessee, which assessment was omitted when the owners assessed the land for taxation, would not result in double taxation. *Texas Co. v. Daugherty* (T. C. A.), 160 S. W. 129.

Where land is assessed at 50 per cent of its value, and bank stock at its full value, there is a discrimination against the holder of bank stock which entitles him to enjoin collection of the tax, because under the Constitution, Art. 8, Sec. 1, and R. S. Art 7573, all property must be taxed in proportion to its value, and where property has a market value, it must be taxed at that value. *Porter v. Langley*, 155 S. W. 1042.

Assessment against the owner of the realty is separate from the interest of oil and gas lessee, which is assessed against the lessee although subject to forfeiture and where no well has been drilled. *Texas Co. v. Daugherty* (T. C. A.), 160 S. W. 129.

Under Article 7505 bonds, notes and other securities are property for the purposes of taxation. *Guarantee Life Ins. Co. v. City of Austin* (T. C. A.), 165 S. W. 53.

Although a vendor's lien may be retained for the price of the property, the vendee is considered the owner for the purpose of taxation. *Harvey v. Provident Inv. Co.* (T. C. A.), 156 S. W. 1127.

265. Manner of Rendering Property for Taxation.—All property shall be listed or rendered in the manner following:

1. **By the Owner.**—Every person of full age and sound mind, being a resident of this State, shall list all of his real estate, moneys, credits, bonds or stock of joint stock or other companies (when the property of such company is not assessed in this State), moneys loaned or invested, annuities, franchises, royalties, and all other property.

2. **As Agent.**—He shall also list all lands or other real estate, all moneys and other personal property invested, loaned or otherwise controlled by him as agent or attorney, or on account of any other person, company or corporation whatsoever, and all moneys deposited subject to his order, check, or drafts and credits due from or owing by any person, body corporate or politic.

3. **Minor.**—The property of a minor child shall be listed by his guardian, or by the person having such property in charge.

4. **Wife.**—The property of a wife, by her husband, if of sound mind; if not, by herself.

5. **Idiot.**—The property of an idiot or lunatic, by the person having charge of such property.

6. **Cestui que Trust.**—The property of a person for whose benefit it is held in trust by the trustee of the estate; of a deceased person, by the executor or administrator.

7. **Receivers.**—The property of corporations whose assets are in the hands of receivers, by such receivers.

8. **Corporations.**—The property of a body politic or corporate, by the president or proper agent or officer thereof.

9. **Copartnership.**—The property of a firm or company, by a partner or agent thereof.

10. **Manufactories.**—The property of manufacturers and others in the hands of an agent, by such agent, in the name of his principal, as real, personal and merchandise.

11. **Nurseries.**—The stock of nurseries, growing and otherwise, in the hands of nurserymen shall be listed and assessed as merchandise. [R. S. Art. 7509.]

See notes under Sections 260 and 263.

A seller of cattle under an unexecuted contract held liable for taxes assessed before delivery. *Edwards v. Irvin* (Civ. App.), 45 S. W. 1026.

County school land sold on an executory contract held to be taxable to the purchaser. *Taber v. State*, 38 C. A. 235, 85 S. W. 835.

The owner of property on January 1st of any year held personally liable for taxes of that year. *C. B. Carswell & Co. v. Habberzettie*, 39 C. A. 493, 87 S. W. 911.

A vendee of land is for the purpose of taxation considered the owner, though a vendor's lien is retained for the price. *Harvey v. Provident Inv. Co.* (Civ. App.), 156 S. W. 1127.

Under this article and Article 7503, notes taken by agents of a foreign corporation selling pianos from a store kept in the State held liable to taxation in the State. *Jesse French Piano & Organ Co. v. City of Dallas* (Civ. App.), 61 S. W. 942.

266. Where Property Shall Be Rendered.—All property, real and personal, except such as is required to be listed and assessed otherwise, shall be listed and assessed in the county where it is situated; and all personal property, subject to taxation and temporarily removed from the State or county, shall be listed and assessed in the county of the residence of the owner thereof, or in the county where the principal office of such owner is situated. [R. S. Art. 7510.]

Credits are taxable at the place of residence of the owner, and not at the place where they may be deposited. *Ferris v. Kemble*, 75 Tex. 476, 12 S. W. 689.

Cattle are to be taxed in the county where being pastured on January 1st, and not in the county where the owner resides. *Clampitt v. Johnson*, 42 S. W. 866.

Non-residents loaning money in this State are not subject to taxation upon the money so loaned. *Primm v. Fort*, 57 S. W. 972.

Notes belonging to a foreign corporation held in this State by an agent who conducts the business of his principal are subject to taxation in this State. *Jesse French Piano & Organ Co. v. City of Dallas*, 61 S. W., 942.

The assessor of one county has no right to assess money of a party which is in a bank of a county other than that in which the assessor resides. *Parker v. State*, 69 S. W. 76.

The rule is that the situs of tangible personal property for taxation is where it is situated, and intangible personal property where the owner resides. Accordingly, the owner of notes, bonds, credits, etc., should render the same in the county of his residence, without regard to where such property is kept or deposited. Ruling of Comptroller.

267. To Be Rendered in but One County.—Lands lying on county boundaries, which have not been accurately and legally surveyed, determined or fixed, shall not be assessed or taxed in more than one county. [R. S. Art. 7511.]

If one whose pasture lies partly in the county of his residence and partly in an adjacent county renders for taxation his cattle feeding on the pasture and pays taxes thereon in the county of his residence and where the herd feeding in the pasture is controlled, he complies with the statute. *Court v. O'Connor*, 65 Tex. 334; *Hardesty v. Fleming*, 57 Tex. 400.

Personal property, belonging either to a corporation or a natural person, must be assessed and the taxes thereon paid in the county where it is situated, unless such county has not been organized, in which event the assessment must be made and the taxes collected in the county to which it is attached for judicial purposes. *Cattle Co. v. Faught*, 69 Tex. 402, 5 S. W. 494.

Personal property, except when otherwise provided, is taxable where the owner resides. Tangible personal property in a town or city is subject to taxation at that place. Intangible personal property, such as credits, are taxable at the place of the residence of the owner. *Farris v. Kimble*, 75 Tex. 476, 12 S. W. 689; *Connor v. City of Waxahachie* (Sup.), 13 S. W. 30.

Under this article cattle held taxable in the county where being pastured on January 1st, and not in the county where the owner resides. *Clampitt v. Johnson*, 17 C. A. 281, 42 S. W. 866.

For purpose of taxation the situs of intangible property of a railroad, consisting of franchise, good will, etc., is considered as located wherever its tangible property is distributed. *State v. Austin & N. W. Ry. Co.* (Civ. App.), 60 S. W. 886.

The assessor of one county has no right to assess money of a party which is in a bank of a county other than that in which the assessor resides. *Parker v. State*, 44 Cr. R. 147, 69 S. W. 76.

When the property is physical in character, it must be taxed in the county where actually situated or located. *City of Galveston v. J. M. Guffey Petroleum Co.*, 51 C. A. 642, 113 S. W. 585.

268. Where Live Stock Shall Be Rendered, and How.—All persons, companies and corporations owning pastures in this State which lie on county boundaries shall be required to list for assessment all live stock of every kind owned by them in said pastures in the several counties in which such pastures are situated, listing in each county such portion of said stock as the land in such county is of the whole pasture. All persons, companies and corporations owning any kind of live stock in pasture not their own shall list said live stock in the several counties in which such pastures are situated in the same manner; and in both cases the tax upon such live stock shall be paid to the tax collectors of the several counties in which such live stock is listed and assessed. [R. S. Art. 7512.]

When a pasture lies partly in two counties, the owner may render the stock in the county of his residence. *Court v. O'Connor*, 65 Tex. 334.

Place of taxation of cattle moved and pastured on lands in another county with intent to have them removed to the county of the residence of the owner determined. *Clampitt v. Johnson*, 17 C. A. 281, 42 S. W. 866.

An assessment of live stock by the assessor of the county of the owner's residence, made under Article 7566, held in violation of the Constitution, Art. 8, Par. 11, where the situs of the stock was fixed in other counties by this article. *Cammack v. Matador Land & Cattle Co.*, 30 C. A. 421, 70 S. W. 454.

In this article the Legislature intended to fix the situs of live stock

where running on the range in pastures located on the borders of different counties, and the stock must be assessed in each county in such proportion as the land in the county bears to the whole pasture. *Id.*

Under this article stock must be assessed in each county in such proportion as the land in the county bears to the whole pasture. *Cammack v. Matador Land & Cattle Co.*, 70 S. W. 455.

Cattle running on the range in more than one county are taxable in the county where the owner resides. *Ruling of Comptroller.*

269. Taxes not to Be Paid Twice, Etc.—Any lands which may have been assessed in any county according to the abstract of land titles, and the taxes paid thereon according to law, shall not be afterwards subject to the payment of taxes for the same period in a different county, although a subsequent survey and determination of the county boundaries may show said lands to be in a different county from that in which they were originally assessed; and any sales of such lands for alleged delinquency shall be illegal and void. [R. S. Art. 7513.]

The franchise of a railroad is not taxable as a property separate from its real estate; to so tax it would be double taxation. *State v. Austin & N. W. Ry. Co.*, 94 Tex. 530, 62 S. W. 1051.

Where a telegraph company has paid taxes on its real and personal property, a taxation of its franchise is double taxation. *Southwestern Telegraph & Telephone Co. v. Meerscheldt* (Civ. App.), 65 S. W. 381.

Assessment of railroad property for taxation held not to be double. *Galveston & W. Ry. Co. v. City of Galveston*, 33 C. A. 384, 77 S. W. 269.

An assessment of mineral rights severed from the ownership of the surface held not invalid because the owners of the surface were required to pay the same tax as other owners who had not severed the mineral rights in their land. *State v. Downman* (Civ. App.), 134 S. W. 787.

As to the remedy to prevent a double assessment, see *Rosenberg v. Weekes*, 67 Tex. 578, 4 S. W. 899; *Chisholm v. Adams*, 71 Tex. 678, 10 S. W. 336.

The fact that the tax rolls show that a certain person has for years paid taxes on property sufficient notice to the county of the ownership thereof and to bar an action against unknown owners. *Hill & Jahns v. Lofton*, 165 S. W. 67.

NOTE.—Where taxes have been paid twice for any one year, the Comptroller is not authorized to refund money overpaid.

270. Steamboats and Vessels—Where Listed.—All persons, companies and corporations in this State owning steamboats, sailing vessels, wharf boats and other water crafts shall be required to list the same for assessment and taxation in the county in which the same may be enrolled, registered or licensed, or kept when not enrolled, registered or licensed. [R. S. Art. 7514.]

A city has no jurisdiction to assess for taxation vessels which have ac-

quired an actual situs at another place, although enrolled in the United States custom house in such city. *City of Galveston v. J. M. Guffey Petroleum Co.*, 51 C. A. 642, 113 S. W. 585.

For the purpose of taxation, vessels may acquire an actual situs, and the place of enrollment and registration is not controlling, if the actual situs is elsewhere. *Id.*

Coasting vessels that have no physical situs, but ply from point to point in the State, are taxable in the county of their owner's domicile, although they were enrolled in the county of Galveston. *State v. Higgins Oil & Fuel Co.* (Civ. App.), 116 S. W. 618.

271. Railroad, Telegraphs, Etc.—All railroads, telegraph, plank road and turnpike companies shall list all of their real and personal property, giving the number of miles of roadbed and line in the county where such roadbed and line is situated, at the full and true value, except when such company may own personal property or real estate in an unorganized county or district, then they shall list such property to the Comptroller. [R. S. Art. 7515.]

272. Persons Listing Property as Agents for Others.—Persons required to list property on behalf of others shall list it in the same manner in which they are required to list their own, but they shall list it separately from their own, specifying in each case the name of the person, estate, company or corporation to whom it belongs. [R. S. Art. 7516.]

273. Each Person Shall List Under Oath.—Each person required by law to list property shall make and sign a statement, verified by his oath, as required by law, of all property, both real and personal in his possession, or under his control, and which he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor. [R. S. Art. 7517.]

274. The Statement of Rendition and Its Requisites.—Such statement shall truly and distinctly set forth :

1. The name of the owner, and a description sufficient for the identification of any real estate belonging to such owner.
2. The number of acres.
3. The value of the land.
4. The number of the lot or lots.
5. The number of the block.
6. The value of town lots.
7. The name of the city or town.
8. The number of miles of railroad in the county.
9. The value of railroads and appurtenances.
10. Number of miles of telegraph in the county.
11. Value of telegraph and appurtenances in the county.

12. Number and amount of land certificates and value thereof.
13. Number of horses and mules and the value thereof.
14. Number of cattle and the value thereof.
15. Number of jacks and jennets and value thereof.
16. Number of sheep and value thereof.
17. Number of goats and value thereof.
18. Number of hogs and dogs and value thereof.
19. Number of carriages, buggies, wagons, automobiles, bicycles, motorcycles, or other vehicles of whatsoever kind and the value of each one thereof.
20. Number of sewing machines and knitting machines and value thereof.
21. Number of clocks and watches and value thereof.
22. Number of organs, melodeons, piano fortes, and all other musical instruments of whatsoever kind and value thereof.
23. The value of household and kitchen furniture over and above the amount of two hundred and fifty dollars.
24. Office furniture and the value thereof.
25. The value of gold and silver plate.
26. The value of diamonds and jewelry.
27. Every annuity or royalty, the description and value thereof.
28. Number of steamboats, sailing vessels, wharf boats, barges or other water craft, and the value thereof.
29. The value of goods, wares and merchandise of every description which such person is required to list as a merchant (in hand on the first day of January of each year).
30. Value of materials and manufactured articles which such person is required to list as a manufacturer.
31. Value of manufacturers' tools, implements and machinery other than boilers and engines, which shall be listed as such.
32. Number of steam engines, including boilers, and the value thereof.
33. Amount of moneys of bank, banker, broker or stock jobber.
34. Amount of credits of bank, banker, broker or stock jobber.
35. Money on hand or on deposit, in or out of the State, with banks, trust companies, corporations, firms or individuals, and subject to order, check or draft, including certificates of deposit.
36. Amount of credits other than of bank, banker, broker or stock jobber.
37. Amount and value of bonds and stocks other than United States bonds.
38. Amount and value of shares of capital stock companies and associations not incorporated by the laws of this State.

39. Value of all property of companies and corporations other than property hereinbefore enumerated.

40. Value of stock and furniture of saloons, hotels and eating houses.

41. Value of every billiard, pigeon hole, bagatelle or other similar tables, together with the number thereof.

42. Every franchise, the description and value thereof.

43. Value of all other property not enumerated above. [R. S. Art. 7518.]

See *State v. Downmann* (Civ. App.), 134 S. W. 787.

This article, in prescribing the requisites of an assessment for State and county taxes, does not apply to assessments for city taxes. *Eustis v. City of Henrietta*, 90 Tex. 468, 39 S. W. 567.

Deposit in bank subject to sight check regarded as cash. *Campbell v. Wiggins*, 20 S. W. 730, 2 C. A. 1.

If a company have intangible assets, although it have no real estate, they may be assessed and valued as provided in this article. *Missouri, K. & T. Ry. Co. v. Shannon*, 100 Tex. 379, 100 S. W. 145.

Under this article the three essential requirements are the name of the owner, if known, the description of the property, and its value, and, hence, where an owner of city lots listed them for assessment as 15 acres of the J. survey, valued at \$3000, and this assessment was not objected to either by the assessor or the board of equalization, and the owner paid taxes levied on such assessment, a subsequent assessment of the property by lots and blocks to unknown owners constituted a double assessment, in violation of Article 7694, which the city had no right to make. *McMickle v. Rochelle* (Civ. App.), 125 S. W. 74.

Description is sufficient when it furnishes the means by which the property can be identified from the description itself, or by use of extrinsic evidence to apply that description to the property. *Eustis v. City of Henrietta*, 90 Tex. 468, 39 S. W. 567. See also *Grace v. City of Bonham*, 2 T. C. R. 698.

Where there were two surveys in the same county in the name of the same grantee and for the same number of acres, an assessment against unknown owner, by giving the abstract number, name of original grantee and number of acres, not sufficient. *State v. Farmer*, 94 Tex. 232.

When the property is rendered by the owner, the same fullness of description is not required as if the assessment was against an unknown owner or upon property not rendered by the owner. *Cooper Grocery Co. v. City of Waco*, 6 T. C. R. 52.

When only a portion of a survey is assessed, some further description than the abstract number, certificate number, survey number, name of original grantee and number of acres is required. *Morgan v. Smith*, 70 Tex. 641, 8 S. W. 529.

Where the whole of a survey was delinquent, and the whole of it assessed by number and grant, the fact that the number of acres was stated at 640, when it really contained 706, did not render the assessment invalid to any part of the survey. *Kenson v. Gage*, 9 T. C. R. 725.

This article has no application to assessments for city taxes. *Eustis v. City of Henrietta*, 39 S. W. 567.

Deposit in bank subject to sight check regarded as cash. *Campbell v. Wiggins*, 20 S. W. 730.

275. Certain Credits and Stocks not to Be Listed.—No person shall be required to list or render a greater portion of his credits than he believes will be received or can be collected, or to include in his statement as a part of his personal property which is required to be listed any share or portion of the capital stock or property of any company or corporation which is required to list or return its capital and property for taxation. [R. S. Art. 7519.]

276. Rendition of Real Estate for Taxation.—Persons listing or rendering real estate shall make a statement, duly signed and under oath, which shall truly and distinctly set forth:

1. The name of the owner, abstract number, number of survey, the number of the certificate, the name of the original grantee, the number of acres, and the true and full value thereof.

2. The number of the lot and block and the true and full value thereof, together with the name of the town or city.

3. When the name of the original grantee, or abstract number, or number of certificate, or number of survey is unknown, say "unknown," and give such description so that land or lot can be identified and the true and full value thereof can be determined. [R. S. Art. 7520.]

An illegal system of taxation against land which reduces the value thereof and the existence of illegal taxes constitutes a cloud on the title, which equity would remove. *City of Houston v. Baker*, 178 S. W. 820.

When persons are injuriously affected by a discriminatory plan or system of taxation, injunction is the proper remedy. *City of Houston v. Baker*, 178 S. W. 820.

The sole duty of a tax collector is to collect taxes and a suit cannot be maintained against him for an invalid assessment, neither can a property owner maintain suit against him and compel him to cancel invalid tax assessments, which are a cloud on his title, because he would not institute suit thereof, the statute providing that suit must be in the name of the State. *Raley v. Bitter*, 170 S. W. 857.

277. Assessment of Personal Property by Rendition by Banker, Broker, Etc.—Every bank, whether of issue or deposit, banker, broker, dealer in exchange, or stock jobber, shall at the time fixed by this chapter for listing personal property, make out and furnish the assessor of taxes a sworn statement showing:

1. If a national bank, the president or some other officer of such bank shall furnish to the assessor of the county in which such bank

is located a list of the names of all the shareholders of the stock, together with the number and amount of the shares of each stockholder of stock in said bank; and the shareholders of the stock in national banks shall render to the tax assessor of the county in which said bank is located the number of their shares and the true and full value thereof. All shares of stocks in national banks not rendered to the assessor of taxes in the county where such bank is located within the time prescribed by law for listing property for taxes shall be assessed by the assessor against the owner or owners thereof as unrendered property is assessed; but the tax roll shall show the name of the owner or owners thereof as per statement furnished by the president or other officers of said bank.

2. National banks shall render all other bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stock or stocks of other companies or corporations held as an investment or in any way representing assets, together with all other personal property belonging or pertaining to said bank, except such personal property as is specially exempted from taxation by the laws of the United States.

3. National banks shall be required to render all of their real estate as other real estate is rendered; and all the personal property of said national banks herein taxed shall be valued as other personal property is valued.

4. All other banks, bankers, brokers or dealers in exchange, or stock jobbers shall render their list in the following manner:

(1) The amount of money on hand or in transit or in the hands of other banks, bankers, brokers or others subject to draft, whether the same be in or out of the State.

(2) The amount of bills receivable, discounted or purchased and other credits due or to become due, including accounts receivable, interest accrued but not due, and interest due and unpaid.

(3) From the aggregate amount of the items in the first and second of the last two subdivisions shall be deducted the amount of money on deposit.

(4) The amount of bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stocks of other companies or corporations held as an investment or in any way representing assets.

(5) All other property belonging or appertaining to said bank or business, including both personal property and real estate, shall be listed as other personal property and real estate. [R. S. Art. 7521.]

visions of this article in so far as it provides a basis of assessing the personal property of such banks, and provides a means of taxing the personal property of State banking corporations in the hands of the shareholders, so that a State bank as a corporation is not liable for any taxes except those assessed against its real property, and an assessment against such a bank by a city of a personal tax on its stock, surplus, and undivided profits was unauthorized. *City of Marshall v. State Bank of Marshall* (Civ. App.), 127 S. W. 1083.

All the property, both real and personal, of a bank chartered under the laws of Texas is subject to taxation. To tax the shares of such a bank, which are but evidence of an interest in property already taxed, would be in effect to impose a double taxation. The fact that the bank fails to render its property for taxation, will not authorize an assessor to list for taxation its shares of stock. *Gillespie v. Gaston*, 67 Tex. 599, 4 S. W. 248.

In Rev. St. 1879, Art. 4684 (re-enacted with modifications in this article), "the amount of money on deposit" is meant the amount of debt due depositors, and not money belonging to others and held by the bank as bailee. The words "except United States treasury notes" refer to money on hand or in transit, and not to "money in the hands of other banks, bankers or brokers, or others, subject to draft." *Griffin v. Heard*, 78 Tex. 607, 14 S. W. 892.

The real estate of a bank is to be taxed in its own name, and its personal property in the names of its shareholders. *Engelke v. Schlenker*, 75 Tex. 559, 12 S. W. 999.

The object of this article is not to define the property of banks and bankers subject to taxation, but merely to secure a faithful rendition of their assets. It is additional to the provisions of Article 5076, which applies to banks as well as all other taxpayers. *Griffin v. Heard*, 78 Tex. 607, 14 S. W. 892.

The stockholders of a national bank can not have deducted from the values of their shares of stock, when rendering to the State officer for taxation, the sum of money invested by the bank in United States bonds, or held by the bank in form of legal tender notes. *Adair v. Robinson*, 25 S. W. 734.

It is not within the power of the State to subject the property of national banks to taxation without the consent of Congress. *First National Bank of Lampasas v. City of Lampasas*, 78 S. W. 42.

The stock of a national bank must be assessed for State or city taxation against the owners of such stock, and not against the bank. *First National Bank of Lampasas v. City of Lampasas*, 78 S. W. 42.

The legality of an assessment of the shares of stock in a national bank is not affected by the custom of the assessor to assess other property at a uniform rate less than its true value, it appearing that such shares were not assessed beyond their true value. *Engelke v. Schlenker*, 75 Tex. 559, 12 S. W. 999.

The personal property of a national bank is not subject to taxation. This property is otherwise reached by assessing the shares of stock against the stockholders. Section 2 of Article 5079 of the Revised Statutes is, therefore, inoperative. *Opinion of Attorney General*.

The surplus and undivided profits of a national bank are not taxable as such against the bank, but same should be considered by the assessor in arriving at the value of the shares of stock. *Ruling of Comptroller*.

The shares of stock in a State bank chartered under the Act of the Twenty-ninth Legislature are not taxable. Such banks are required to render their property in accordance with the provisions of Section 4, Article 5079 of the Revised Statutes. Ruling of Comptroller.

The tax on shares of bank stock is a charge against the shareholder, and levy can be made on any personal property that he has, to enforce collection, by virtue of the tax rolls. Opinion of Attorney General.

Levy can not be made on the shares of stock in a bank for taxes on account of the inability of the collector to make a valid levy and sale without taking possession of the property levied on. In case the taxpayer has no property other than the bank stock, suit may be instituted, the lien foreclosed, and the stock subjected to payment of the tax and cost as under execution. Opinion of Attorney General.

In determining the valuation of shares of stock in national banks for purposes of taxation, the capital of these banks invested in the stock of federal reserve banks should be considered and treated as any other portion of the capital of national banks, and should not be eliminated from the assets of such national banks. Ruling of Attorney General, p. 168, 1914-16.

A State or national banking corporation is not liable for taxes on its capital stock. Ruling of Attorney General, p. 635, 1914-16.

The individual stockholders of a banking corporation are liable for taxes on the shares of stock held by them. Ruling of Attorney General, p. 635, 1914-16.

Owners of bank stock should render the same for taxation at the place where such banking corporation is located, without regard to the residence of the owner, and such stock is liable for all taxes levied and assessed at the place of location of the bank, including State, county, city and school taxes. Ruling of Attorney General, p. 635, 1914-16.

It is proper for a number of banks and their stockholders to join in a suit to enjoin the collection of taxes levied upon their property at a higher value, in proportion, than other property, although one of the number alleged that attempt had been made to tax it on stock in other corporations held by it. *Brown v. First Natl. Bank of Corsicana*, 175 S. W. 1122.

The fact that part of the taxes, the collection of which was sought to be enjoined, belonged to the State and county, does not make them necessary parties to the suit. *Brown v. Bank*, 175 S. W. 1122.

278. Assessment of Real Estate by Banks.—Every banking corporation, state or national, doing business in this State shall, in the city or town in which it is located, render its real estate to the assessor of taxes at the time and in the manner required of individuals. At the time of making such rendition the president or some other officer of said bank shall file with said assessor a sworn statement showing the number and amount of the shares of said bank, the name and residence of each shareholder, and the number and amount of shares owned by him. Every shareholder of said bank shall, in the city or town where said bank is located, render at their actual value to the assessor of taxes all shares owned by him in such bank;

and in case of his failure so to do, the assessor shall assess such unrendered shares as other unrendered property. Each share in such bank shall be taxed only for the difference between its actual cash value and the proportionate amount per share at which its real estate is assessed. The taxes due upon the shares of banking corporations shall be a lien thereon, and no banking corporation shall pay any dividend to any shareholder who is in default in the payment of taxes due on his shares; nor shall any banking corporation permit the transfer upon its books of any share, the owner of which is in default in the payment of his taxes upon the same. Nothing herein shall be so construed as to tax national or state banks, or the shareholders thereof, at a greater rate than is assessed against other moneyed capital in the hands of individuals. [R. S. Art. 7522.]

The object of this statute was to incorporate in the law of this State the provision of the Federal statute for the protection of national banks; adding there to so much as was necessary to accord the same protection to State banks. *Primm v. Fort*, 23 C. A. 605, 57 S. W. 86, 972.

This article operates to except incorporated State banks from the provisions of Art. 7521, in so far as that article provides a basis of assessing the personal property of such banks, and provides a means of taxing the personal property of State banking corporations in the hands of the shareholders, so that a State bank as a corporation is not liable for any taxes except those assessed against its real property, and an assessment against such a bank by a city of a personal tax on its stock, surplus, and undivided profits was unauthorized. *City of Marshall v. State Bank of Marshall* (Civ. App.), 127 S. W. 1083.

The taxable value of bank shares depends upon the value of the franchise, capital and property of all kinds, less the amount of its debts. *Rosenberg v. Weeks*, 67 Tex. 584, 4 S. W. 899; *Engelke v. Schlenker*, 75 Tex. 561, 12 S. W. 999.

The general deposits with a bank are debts against it. *Engelke v. Schlenker*, 75 Tex. 561, 12 S. W. 999.

The amount to be deducted from the value of the shares of stock on account of real estate under this article is the assessed value of the real estate, and not its actual value when assessed at less than its actual value. Ruling of Comptroller.

279. No Deduction on Account of Certain Indebtedness.—No person, company or corporation shall be entitled to any deduction on account of any bond, note or obligation of any kind given to any mutual insurance company, nor on account of any unpaid subscription to any religious, literary, scientific or charitable institution or society, nor on account of any subscription to or installment payable on the capital stock of any company, whether incorporated or unincorporated. [R. S. Art. 7523.]

Under no circumstances can the owners of national bank stock be

permitted to deduct their indebtedness from the value of their stock for the purpose of taxation. *Primm v. Ford*, 23 C. A. 605, 57 S. W. 92, 972.

280. Assessment of Property by Railroads.—It shall be the duty of every railroad corporation in this State to deliver a sworn statement, on or before the thirtieth day of April of each year, to the assessor of each county and incorporated city or town, into or through which any part of their road may run or in which they own or are in possession of real estate, a classified list of all real estate owned by or in possession of said company in said county, town or city, specifying:

1. The whole number of acres of land, lot or lots, exclusive of their right of way and depot grounds, owned, possessed or appropriated for their use, with a valuation affixed to the same.

2. The whole length of the railroad and the value thereof per mile, which valuation shall include right of way, roadbed, superstructure, depots and grounds upon which said depots are situated, and all shops and fixtures of every kind used in operating said road.

3. All personal property of whatsoever kind or character, except the rolling stock belonging to the company or in their possession in each respective county, listing and describing the said personal property in the same manner as is now required of citizens of this State. [R. S. Art. 7524.]

The value of a railroad is not the mere value of its right of way, roadbed and superstructure, its depot grounds and structures thereon, but the value of all these as an operating going concern, and this value is in general determined by the profits resulting from its operation. *State v. Austin & N. W. Ry. Co.*, 94 Tex. 530, 62 S. W. 1050.

The assessment of the intangible personal property of a railroad company, consisting of its rights, privileges, immunities, good will, contracts and franchise to do and carry on its business at a lump sum, is invalid. Even taxable at all each specific article for property must be valued by itself. There is no law for assessing taxation property by the vague description of rights, privileges, immunities, good will, contracts, and franchises, as the property of any individual or corporation. *Id.*

A railroad is assessed as an entirety, and not as so many distinct miles of a road or distinct parts of the surveys over which it passes. *State v. St. Louis S. W. Ry. Co.*, 43 C. A. 533, 96 S. W. 70.

Railroad bridges over which the railroad is constructed are not subject to separate assessment; they are included in the roadbed. *Cook v. G. H. & S. A. Ry. Co.*, 24 S. W. 544; *Schmidt v. G. H. & S. A. Ry. Co.*, 24 S. W. 547.

The franchise of a railroad is not taxable as a property separate from its real estate; to so tax it would lead to double taxation, which is not permitted. *State v. A. & N. W. Ry. Co.*, 94 Tex. 530, 62 S. W. 1051.

281. Railroads to Return Sworn Statements, When, Etc.—It shall be the duty of every railroad corporation in this State to deliver a

sworn statement, on or before the first day of April in each year, to the assessor of the county in which its principal office is situated, setting forth the true and full value of the rolling stock of said railroad, together with the names of all the counties through which it runs, and the number of miles of roadbed in each of said counties; and said statement shall be submitted to the board of equalization of the county in which its principal office is situated for review, as is provided by Article 7564 of this Code, and the other laws of this State, or such firm does business, or such corporation or association has its principal office; and said statement shall be, by the tax assessor to whom it is certified, submitted to the board of equalization of the county for review, and the same shall be equalized by the board of equalization of such county, and certified to the Comptroller, and apportioned by the Comptroller in the same manner as other rolling stock is certified and apportioned under the preceding provisions of this article; and, if it appears from said statement that the person, firm, corporation or association owning such rolling stock is a non-resident of the State of Texas, then said statement shall be submitted to the board of equalization of the county in which the principal office of the railroad company using the same under rental, hire, lease or other form of contract is situated, which statement shall be reviewed by said board of equalization, and said property assessed against the owner, and certified to the Comptroller, and the valuation apportioned against said owner by the Comptroller in the same manner as rolling stock belonging to the railroad corporation furnishing the list. [R. S. Art. 7525.]

Under this article and Arts. 939, and Const. Art. 8, Secs. 5, 8, a city containing the principal office of a railroad company was not, for that reason, authorized to levy municipal taxes on all the railroad's rolling stock, only a small portion of which necessarily be within the city on the first day of January of each year; the term "lying or being within the city limits of any city or incorporated town," etc., when applied to tangible movable property meaning only such property as is actually and physically within the limits of the city. *City of Tyler v. Coker* (Civ. App.), 124 S. W. 729.

This Article is confined in its application to directing a mode by which railroad rolling stock may be assessed by counties and not to any other political subdivision of the State. Accordingly, such rolling stock is not subject to taxation by school districts through which the road runs. Opinion of Attorney General.

282. Assessments and Collections of Corporate Property.—All property of private corporations, except in cases where some other provision is made by law, shall be assessed in the name of the corporation; and in collecting the taxes on the same all the personal

property of such corporation shall be liable to be seized whenever the same may be found in the county, and sold in the same manner as the property of individuals may be sold for taxes. All statements and lists made by corporations that are required to be sworn to shall be verified by the affidavit and signature of the secretary of said corporation, and, if they have no secretary, the officer who discharges the duties of secretary of said corporation. [R. S. Art. 7526.]

283. Assessments of Property in Owner's Name.—All real property subject to taxation shall be assessed to the owners thereof in the manner herein provided; but no assessment of real property shall be considered illegal by reason of the same not being listed or assessed in the name of the owner or owners thereof. [R. S. Art. 7527.]

Where the name of the owner was unknown, the Act of 1848 required lands to be assessed by a description thereof, one of the essential particulars of which was the name of the grantee. *Yenda v. Wheeler*, 9 Tex. 408.

See what is said in this case as to land being taxed in the name of the present owner instead of in the name of the original grantee. *Pitts v. Booth*, 15 Tex. 453.

When there is an abstract number, the name of original grantee, number of acres and value, and there being no certificate or survey number, a mistake in the name of the owner will not affect the tax lien on the land. *Taber v. State*, 38 C. A. 235, 85 S. W. 835.

When the description in the assessment of land is sufficient to identify it, any mistake in the name of the owner does not effect the tax lien. *Taber v. State* 12 Tex. Cr. App. 363.

Personal property can not be legally assessed to unknown owner. Opinion of Attorney General.

Persons listing property as agent for others are required to list it in the name of the person, estate, company or corporation to whom it belongs. Ruling of Comptroller.

Article 7527, R. S., which is meant to cure assessments of land rendered for taxes by the owner which are defective because not assessed in his name, does not validate an assessment of unrendered property in the name of the deceased former owner, invalid under Art. 7563. *Coleman v. Crowds*, 178 S. W. 585.

284. All Taxes a Lien Upon the Property Taxed.—All taxes upon real property shall be a lien upon such property until the same shall have been paid. And should the assessor fail to assess any real estate for any one or more years, the lien shall be good for every year that he should fail to assess for; and he may, in listing property for taxes any year thereafter, assess all the back taxes due thereon, according to the provisions of this title. [R. S. Art. 7528.]

Taxes assessed against a homestead are a lien thereon, and it may be sold therefor, notwithstanding Const. Art. 16, Sec. 50, protecting the home-

stead against forced sale, and providing that no mortgage, deed of trust, or other lien on the homestead shall be valid; the words "other liens" including only those created by contract. *City of San Antonio v. Toepferwein*, 104 Tex. 43, 133 S. W. 416.

Under this Article and Art. 5683, and Const. Art. 8, Sec. 15, where defendants, in adverse possession of certain land had not been in possession for the 10 years required to confer title when the State instituted suit to foreclose its lien for unpaid taxes, so that they were not proper parties to such action, they were still bound by the judgment, though not served with notice, as provided by Art. 7698, and hence were not entitled to hold the land as against the purchaser from the State and those claiming under him. *Patton v. Minor*, 103 Tex. 176, 125 S. W. 6.

Lien for taxes attaches only to separate tract taxed and not to property of taxpayer generally. *Jordan v. Brenham*, 57 Tex. 657.

Lien for taxes given by the Constitution is charge merely upon each separate tract for the tax assessed against it. *State v. Baker*, 49 Tex. 764. No lien for taxes attaches to land until a valid assessment is made. *State v. Farmer*, 94 Tex. 235, 59 S. W. 541.

It is the assessment made annually by the officers of the State under and in accordance with the law which holds a lien upon the land. *Id.*

The lien for taxes is superior to the widow's allowance. *State v. Jordan*, 1 Tex. Cr. App. 747.

285. Leasehold Interests in Public Lands—How Rendered.—Property held under a lease for a term of three years or more, or held under a contract for the purchase thereof, belonging to this State, or that is exempt by law from taxation in the hands of the owner thereof, shall be considered for all the purposes of taxation, as the property of the person so holding the same, except as otherwise specially provided by law. Timber held by persons or corporations, heretofore or hereafter purchased from the State under the various laws for that purpose, shall likewise be subject to assessment for taxes, and the value thereof for taxation shall be ascertained as the value of other property is ascertained. And, should the owner of such timber fail or refuse to pay the taxes assessed against it, the same shall be sold for the taxes thereon, as provided in this title for the sale of personal property for taxes, provided the same can be found by the collector; but, if the timber can not be found, then the collector shall collect the taxes due as the taxes on other personal property are collected; provided, further, that the Commissioner of the General Land Office shall furnish by the first of January each year to the various commissioners' courts and the tax assessors of the State of Texas a full and complete list of all timber sold by the State belonging to the school funds, giving the number of acres, price and to whom sold, in the respective counties where the timber so sold is situated. In case of the sale

of such timber for taxes as herein provided, the purchaser shall take and hold the same under the same terms and conditions as the original purchaser thereof from the State. [R. S. Art. 7529.]

See *State v. Downman* (Civ. App.), 134 S. W. 787.

School lands leased for a term of years cannot be assessed against the lessee at the value of the land, but only at the value of the leasehold determined as provided by Art. 7530. *Dougherty v. Thompson*, 71 Tex. 192, 9 S. W. 99.

The lessee for a term of years of city water works is liable for taxes on the value of the leasehold interest, and not on the value of the property leased. *State v. Taylor*, 72 Tex. 297, 12 S. W. 176.

A lease in which the State reserves the right to sell and thereby terminate the lease at any time is not such title as contemplated in this Article. See Art. 7503. *Thammell v. Faught*, 74 Tex. 557, 12 S. W. 317.

The timber growing upon county lands after it has been sold is taxable as well as timber purchased from the State and growing upon public lands of the State. *Montgomery v. Peach River Lumber Co.*, 54 C. A. 143, 117 S. W. 1063.

County school lands are not subject to taxation while owned by counties, whether the land be leased or not; neither is the leasehold taxable. *Dougherty v. Thompson*, 71 Tex. 192, 9 S. W. 99.

A lease for term of years of city water works is taxable. *State v. Taylor*, 72 Tex. 297.

Where timber has been sold separately and apart from the land, though standing, it is taxable separately and apart from the land and to the owner. This rule applies whether the timber stands on land owned by the State or by an individual. *Ruling of Comptroller.*

Unpatented mineral locations under the mining Act of 1895 (Article 3498d et seq., Revised Statutes), are subject to taxation under this Article. The valuation of mineral claims for taxation governed by Subdivision 3, Article 5088, Revised Statutes. *Opinion of Attorney General.*

286. How Property Shall Be Valued for Taxation.—Each separate parcel of real property shall be valued at its true and full value in money, excluding the value of crops growing or ungathered thereon.

In determining the true and full value of real and personal property, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which such property would sell at auction or a forced sale, or in the aggregate with all the property in his county; but he shall value each tract or lot by itself, and at such sum and price as he believes the same to be fairly worth in money at the time such assessment is made.

In valuing any real property on which there is a coal or other mine, or stone or other quarry, or springs possessing medicinal

properties, the same shall be valued at such a price as such property, including a mine or quarry or spring, would probably sell at a fair voluntary sale for cash.

Taxable leasehold estates shall be valued at such a price as they would bring at a fair voluntary sale for cash.

Personal property of every description shall be valued at its true and full value in money.

Money, whether in possession or on deposit, or in the hands of any member of the family, or any other person whatsoever, shall be entered in the statement at the full amount thereof.

Every credit for a sum certain, payable either in money or property, of any kind, shall be valued at the full value of the same so payable. If for a specified article or for a specified number or quantity of property of any kind, it shall be valued at the current price of such property at the place where payable. Annuities or moneys payable at stated periods shall be valued at the price that the person listing the same believes them to be worth in money. [R. S. Art. 7530.]

See *State v. Downman* (Civ. App.), 134 S. W. 787.

Where in a suit to restrain the collection of taxes on bank stock, because assessed at a higher rate than other property in the county, the evidence showed that land had a market value in the county and what it was, and instruction that the true cash market value of a commodity such as bank stock or land is the amount of cash or its equivalent for which the commodity can be bought or sold in due course of trade was not objectionable for failing to make a distinction between cash market value and the real or intrinsic value of the property, since the law contemplates that all property shall be taxed according to its reasonable market value, where it has a market value. *Porter v. Langley* (Civ. App.), 155 S. W. 1042.

The general rule is that the owner of real estate leased is taxed upon the entire value of the property. This satisfies the constitutional requirement that all property in this State, whether owned by natural persons, or corporations other than municipal, shall be taxed according to its value. *Dougherty v. Thompson*, 71 Tex. 192.

When a leasehold is taxed its value should be deducted from the taxable interest of the owner. *Id.*

The legality of an assessment of a tax on the property of a national bank which does not exceed its true value is not affected by the custom of the assessor to assess other property at a uniform valuation less than its true value. *Engelke v. Schlenker*, 75 Tex. 559, 12 S. W. 999.

A bank may accumulate United States treasury notes over its counter and such sum be exempted from taxation; otherwise if the treasury notes had been procured for the special purpose of avoiding taxation by the exchange of taxable money or property. *Griffin v. Heard*, 78 Tex. 607, 14 S. W. 892. See Arts. 7521, 7531.

Deposit in bank subject to sight check is cash, and as such is not

subject to set-off by the liabilities of the taxpayer. *Campbell v. Wiggins*, 2 C. A. 1, 20 S. W. 730.

Under this Article, the several tracts owned by a property owner should be assessed separately, and not as a whole. *Lufkin Land & Lumber Co. v. Noble* (Civ. App.), 127 S. W. 1093.

287. United States Paper Money Taxable.—Circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States, payable on demand and circulating or intended to circulate as currency, and gold, silver and other coin, shall be hereafter subject to taxation as money on hand or on deposit, under the laws of this State. [R. S. Art. 7531.]

Legal tender notes and United States bonds if a corporation or an individual are not taxable. *Rosenberg v. Weeks*, 67 Tex. 578, 4 S. W. 899.

288. To Be Assessed as Money on Hand.—The assessor of taxes shall assess the same in the same manner as money on hand or on deposit or other personal property, as provided for in the general assessment laws of this State. [R. S. Art. 7532.]

CHAPTER XIV.

MANNER OF ASSESSMENT OF TAXES—ELECTION AND QUALIFICATION OF THE ASSESSOR—DUTIES.

(From Chapter 12, Title 126, R. S.)

	SEC.		SEC.
Election and Term of Office of Assessor	289	Shall Procure Certificate from Board of Equalization.....	315
Manner of Filling Vacancy in Office of Assessor.....	290	Substitute to Be Employed if Assessor Fails	316
Oath and Bond of Assessor.....	291	Comptroller to Carry Out Law in Unorganized Counties.....	317
Purview of Bond of Assessor.....	292	Manner and Form of Assessing Property for Taxes.....	318
New Bond Shall Be Given, When Shall Give Bond for County Taxes	294	Assessment of Property Not Rendered	319
Assessor May Appoint Deputies..	295	Commissioner's Courts to Sit as Board of Equalization.....	320
Authority of Assessor's Deputies	296	Assessment of Real Property for Previous Years	321
Assessors Empowered to Administer Oaths	297	Assessment of Back Taxes on Personal Property	322
Oath Administered to Tax Payers by Assessor	298	Duty of Collectors Regarding Unlisted Property; Supplemental Roll	323
Where and How the Oath May Be Made	299	Assessor to Follow Instructions..	324
Penalty for Failure to Attest Oath, etc.	300	Assessment or Payment of Taxes May Be Proven, How.....	325
Any Evasion a Fraud Upon the Public Revenue	301	Equalization of Assessments—How Arrived at.....	326
Shall Require All Taxpayers to Make Oath	302	Boards May Equalize Without Complaint	327
When Assessments Shall Be Made	303	Penalty for Neglect of Duty by Assessor	328
Irregular Assessments to Be Considered Valid	304	Oath to Be Taken by Tax Assessor	329
How to Serve Notice if Taxpayer is Absent	305	Oath to Be Taken by Members of Board of Equalization.....	330
Procedure When Owner Refused to List	306	Neglect of Duty Cause for Removal from Office; Attorney General to File Suit.....	331
Duty of Assessor Upon Failure to Obtain Statement	307	Assessor to Furnish List of Delinquents	332
Commissioner of General Land Office to Furnish Abstracts to Assessors	308	Assessor to Submit Lists to Board of Equalization.....	333
Books to Be Furnished Assessors; How to Be Filled by Assessors	309	Assessor Shall Make Out Rolls in Triplicate	334
How Blanks Shall Be Filled by Assessor	310	Assessor Shall Also Make Out Rolls of Unrendered Property..	335
Manner of Assessing Blocks and Lots in Cities.....	311	Assessor's Duty to Add up Columns	336
Duties of Assessor as to Assessments of Lots and Blocks.....	312	Return and Oath of the Tax Assessor	337
Assessors' Abstracts to Be Kept in Office	313	All Lists, etc., Filed in County Clerk's Office	338
Lands Not on Abstract to Be Placed There	314		

	SEC.		SEC.
Rolls How Distributed and Filed..	339	Owners May Appeal from Comptroller's Assessment	350
Commissions and Compensation of Assessor	340	Comptroller May Levy Upon and Sell, When	351
Compensation of Assessor.....	341	Sale of Lands by Comptroller.....	352
Compensation of Assessor, How Paid	342	Lands May Be Bought by State, When	353
Penalty for Neglect, by Assessor, of Duty	343	Redemption of Lands Sold by Comptroller	354
Lands of Non-residents in Unorganized Counties, How Assessed	344	Tax Deed Made by Comptroller..	355
Lands in Unorganized Counties—How Assessed	345	List of Purchasers to Be Kept in Office of Comptroller.....	356
Duties of Comptroller in Relation to Lands in Unorganized Counties	346	Deed of Comptroller Shall Vest Good Title, When	357
When Comptroller May Receive Such Assessments	347	County Taxes to Be Paid, When..	358
Duty of Comptroller on Receipt of Rolls	348	Comptroller to Keep Taxes of Unorganized Counties Until When	359
How Owners Must Pay.....	349	Duty of Comptroller as to Money Special Deposit to Be Made by Comptroller	360
			361

289. Election and Term of Office of Assessor.—There shall be elected by the qualified electors of each county within this State, at the same time and under the same law regulating the election of State and county officers, an assessor of taxes, who shall hold his office for two years, and until his successor is elected and qualified. [R. S. Art. 7533, Const., Art. 8, Sec. 14. Act Aug. 21, 1876, p. 265, Sec. 1.]

Since neither the Constitution nor statutes of Texas require that county officers must be voters of the county, a citizen of the State is eligible to the office of tax assessor, though not a legal voter of the county where elected, not having resided there for six months previous to the election. *Stensoff v. State*, 80 Tex. 428, 15 S. W. 1100.

290. Manner of Filling Vacancy in Office of Assessor.—In case of a vacancy in the office of assessor of taxes, the same shall be filled by the county commissioners' court for the unexpired term only, and until the election and qualification of an assessor at the succeeding general election; and the person appointed to fill such vacancy shall qualify in the same manner as is prescribed by law for assessors of taxes, and shall have all the rights and perform all the duties required by law of the assessor elected. [R. S. Art. 7534.]

291. Oath and Bond of Assessor.—Every assessor of taxes, within twenty days after he shall have received notice of his election or appointment, and before entering upon the duties of his office, shall execute a bond, payable to the Governor and his successors in office, in a sum which shall be equal to one-fourth the amount of the State tax of the county, as shown by the last preceding assessment, but not to exceed ten thousand dollars, with at least three good and

sufficient sureties, to be approved by the commissioners' court of his county, conditioned that he will faithfully discharge all the duties of said office; and shall take and subscribe the oath prescribed by the Constitution, which oath, together with said bond, shall be recorded in the office of the clerk of the county court of said county, and be forwarded by the county judge of the county to the Comptroller, to be deposited in his office. [R. S. Art. 7535.]

292. Purview of Bond of Assessor.—Said bond shall be deemed to extend to the faithful performance of the duties of his office as assessor of taxes for and during the full term for which he was elected or appointed, and shall not become void upon the first recovery, but suit may be maintained thereon until the whole amount thereof be recovered. [R. S. Art. 7536.]

293. New Bond Shall Be Given, When.—Assessors of taxes may be required to furnish a new bond and additional security whenever in the opinion of the commissioners' court, it may be advisable; and, should any assessor of taxes fail to give a new bond and additional security when required, he shall be suspended from the further discharge of his duties by the commissioners' court of his county, and be removed from office in the mode prescribed by law for the removal of county officers. [R. S. Art. 7537.]

294. Shall Give Bond for County Taxes.—The assessor of taxes shall give a like bond with like conditions to the county judges of their respective counties and their successors in office, in a sum not less than one-fourth of the amount of the county tax of the county, as shown by the last preceding assessment, but not to exceed five thousand dollars, with at least three good and sufficient sureties, to be approved by the commissioners' court of his county; which bond shall be recorded and deposited in the county clerk's office of the county. A new bond and additional security may be required, and the assessor of taxes may be removed from office for a failure to furnish a new bond or additional security in the manner prescribed by law. [R. S. Art. 7538.]

295. Assessor May Appoint Deputies.—Each assessor of taxes may appoint one or more deputies to assist him in the assessment of taxes, and may require such bond and security from the person so appointed as he deems necessary for his indemnity; and the assessor of taxes shall in all cases be liable and accountable for the proceedings and misconduct of his deputies. [R. S. Art. 7539.]

296. Authority of Assessor's Deputies.—The deputies appointed in accordance with the provisions of the preceding article shall do and perform all the duties imposed and required by law of assessors of taxes; and all acts of such deputies done in conformity with law

shall be as binding and valid as if done by the assessor of taxes in person. [R. S. Art. 7540.]

The acts of de facto deputy assessors, in raising the valuation of property listed for taxes, are not rendered invalid because they may have been legally disqualified from acting as deputies by reason of their holding other offices. *T. & P. R. R. Co. v. Harrison County*, 54 Tex. 119.

297. Assessors Empowered to Administer Oaths.—Assessors of taxes are hereby authorized and empowered to administer all oaths necessary to obtain a full, complete and correct assessment of all taxable property situated in their respective counties. [R. S. Art. 7541.]

298. Oath Administered to Taxpayers by Assessor.—The assessor of taxes shall also require each person rendering a list of taxable property to him for taxation, under the assessment laws, to subscribe to the following oath or affirmation, which shall be written or printed at the bottom of each inventory, to-wit: "I, _____, (filling the blank with the name of the person subscribing) do solemnly swear (or affirm) that the above inventory rendered by me contains a full, true and complete list of all taxable property owned or held by me in my own name (or for others, as the case may be, naming the person or firm for whom he rendered the list) in this county, subject to taxation in this county, and personal property not in this county subject to taxation in this county by the laws of this State, on the first day of January, A. D. 19..... (filling the blank with the year), and that I have true answers made to all questions propounded to me touching the same. So help me God." [R. S. Art. 7542.]

It is the imperative duty, under penalty of a fine, for the assessor to administer the oath as contained in this article after the property has been rendered according to other provisions of the law on taxation. *Parker v. State*, 44 Cr. App. 147, 69 S. W. 76.

To predicate perjury on this Article, it should be alleged in the indictment that the oath was administered setting out the oath and the evidence should establish the allegations of the indictment. *Id.*

Under this article and Arts. 7547, 7576, 7577, tax rolls are to be made up from lists by the assessors made out from information furnished by the property owners. *Lofton v. Miller*, 55 C. A. 253, 118 S. W. 911.

299. Where and How the Oath May Be Made.—The owner or agent who is required under the laws of this State to render any property for taxation may render the same in the county where the same is situated by listing the same and making oath thereto, as required in this title, before any officer authorized to administer

oaths in this State, or any officer out of this State that is authorized by law to take acknowledgments of instruments for record in this State, and may forward the same to the assessor of the county by mail or otherwise, and the assessor shall enter the said property on his tax rolls. If the assessor is satisfied with the valuation as rendered in said list, he shall so enter the same; if he is not satisfied with the valuation, he shall refer the same to the board of equalization of the county for their action, and shall immediately notify, by mail or otherwise, the person from whom he received said list that he has referred said valuation to the board of equalization. [R. S. Art. 7543.]

It is not necessary that the owner should reside in the State to render personal property, situated within the State, liable to taxation. *Hardesty v. Fleming*, 57 Tex. 395.

Where the person who makes oath to the list before some other officer out of the county and forwards the list by mail, the assessor, if dissatisfied, is neither required nor empowered to affix a valuation, but should refer the same to the board of equalization. The rule is the same when the list is sent by an individual instead of by mail, if such individual is not authorized to represent the taxpayer. *I. & G. N. R. R. Co. v. Smith County*, 54 Tex. 13.

300. Penalty for Failure to Attest Oath, Etc.—The assessor of taxes, for every failure or neglect to administer the oath or affirmation prescribed in Article 5098 to each person rendering a list of taxable property to him, unless the person refuses to qualify, shall forfeit fifty dollars, to be deducted out of his commissions upon full and satisfactory information furnished the county judge; and for each and every failure or neglect to attest the oath subscribed to as provided in said article, shall forfeit the sum of fifty dollars upon satisfactory information furnished the county judge. The forfeitures imposed by this article shall be deducted from the assessor's commissions on the assessment for county taxes. [R. S. Art. 7544.]

301. Any Evasion a Fraud Upon the Public Revenue.—Any evasion by means of artifice or temporary or fictitious sale, exchange or pretended transfer upon any bank books, of gold and silver coin, bank notes or other notes or bonds subject to taxation under the laws of this State for United States non-taxable treasury notes or any notes or bonds not so subject to taxation, and any such pretended sale, exchange or transfer not made in good faith, and by actual exchange and delivery of the funds so sold, exchanged or transferred and made only by entry on bank books, or by any express or implied understanding not to immediately make a bona fide and permanent sale, shall be deemed *prima facie* to be a fraud upon the public revenue of this State. [R. S. Art. 7545.]

302. Shall Require All Taxpayers to Make Oath.—All assessors of taxes in this State shall require all taxpayers when assessed by them to make oath as to any such sale, exchange or transfer made by them on the first day of January or within sixty days before said first day of January of any year for which any such assessment is made, as to the good faith and bona fide business transaction of any such sale, exchange or transfer, as above set forth, if any such should have been made by them; and, if it should be disclosed that any such pretended sale, exchange or transfer has been made for the purpose of evading taxation, then and in that event the assessor shall list and render against such person the coin, bank notes or other notes or bonds subject to taxation under the laws of this State; provided, that if any person shall make a false affidavit as to any of the foregoing facts he shall be deemed guilty of perjury and be punished as is now provided by law. [R. S. Art. 7546.]

303. When Assessments Shall Be Made.—Assessors of taxes shall, between the first day of January and the thirtieth day of April of each year, proceed to take a list of taxable property, real and personal, in his county and assess the value thereof in the manner following, to-wit: By calling upon the person, or by calling at the office, place of business or the residence of the person and listing the property required by law in his name, and requiring such person to make a statement under oath as prescribed by Article 7542, of such property in the form hereinafter prescribed. [R. S. Art. 7547.]

Under this Article and Arts. 7542, 7547, 7576, 7577, tax rolls are to be made up from lists by the assessors, made out from information furnished by the property owners. *Lofton v. Miller*, 55 C. A. 253, 118 S. W. 911.

304. Irregular Assessments to Be Considered Valid.—Should any property be listed or assessed for taxation after the thirtieth day of April of any year, or should the assessor of taxes or his deputy fail to administer the requisite oath or attest the same in the mode prescribed by law, or should the party rendering property for taxation fail to subscribe to the list, yet the assessment shall, nevertheless, be as valid and binding to all intents and purposes as if made in strict pursuance of law. [R. S. Art. 7548.]

Failure on the part of taxpayer to place a value upon his property, or to swear to the list, does not render the assessment invalid; provided, the Comptroller accepts the rendition without objection. *Magnolia Cattle & Land Co. v. Love*, 21 S. W. 574.

305. How to Serve Notice if Taxpayer Is Absent.—If any person, who is required by this title to list property, shall be sick or

absent when the assessor calls for a list of his property, the assessor shall leave at the office, or usual place of residence or business of such person, a written or printed notice requiring such person to meet him and render a list of his property at such time and place as the assessor of taxes may designate in said notice. The assessor of taxes shall carefully note in a book the date of leaving such notice. [R. S. Art. 7549.]

306. Procedure When Owner Refuses to List.—In every case where any person whose duty it is to list any property for taxation has refused or neglected to list the same when called on for that purpose by the assessor of taxes, or has refused to subscribe to the oath in regard to the truth of his statement of property, or any part thereof, when required by the assessor of taxes, the assessor shall note in a book the name of such person who refused to list or to swear; and in every case where any person required to list property for taxation has been absent or unable from sickness to list the same, the assessor of taxes shall note in a book such fact, together with name of such person. [R. S. Art. 7550.]

307. Duty of Assessor Upon Failure to Obtain Statement.—In all cases of failure to obtain a statement of real and personal property from any cause, it shall be the duty of the assessor of taxes to ascertain the amount and value of such property and assess the same as he believes to be the true and full value thereof; and such assessment shall be as valid and binding as if such property had been rendered by the proper owner thereof. [R. S. Art. 7551.]

If the taxing officer of a city deliberately omits certain property from taxation, it has the same effect as if done by ordinance. *City of Houston v. Baker*, (T. C. A.), 178 S. W. 820.

Article 7661 R. S. does not repeal Art. 7566, *Vernon Sayles' Civ. Stat.*, 1914, which provides for the assessment of omitted property. *State v. Gage* (T. C. A.), 176 S. W. 928.

An assessor is not bound to discover property not rendered for taxes notwithstanding Art. 7566 R. S. *Von Rosenberg v. Lovett*, 173 S. W. 508.

A general statute for the assessment of property does not authorize an assessment for previous years, when other assessors were in office. *State v. Gage*, (T. C. A.), 176 S. W. 928.

308. Commissioner of General Land Office to Furnish Abstracts to Assessors.—The Commissioner of the General Land Office shall furnish to each assessor of taxes in this State a correct abstract of all the surveys of land and number of acres therein in their respective counties; and on the first day of January of each year said Commissioner of the General Land Office shall furnish said assessors an additional list of all new valid surveys in his county during the year; provided, that, in case the records of the Land Office do not

show the quantity of acres in a survey, the surveyor of the district shall furnish said assessor a certified statement of the number of acres therein. [R. S. Art. 7552.]

309. Books to Be Furnished Assessors; How to Be Filled by Assessors.—The commissioners' courts of each county in this State shall procure and furnish the assessor of said county three well-bound books of not less than six hundred and forty pages each, and an index book for same, and such other stationery as may be necessary; said books to be of the best material and make, and shall have printed headings as per following form:

Abstract No. Assessor's Abstract for Co.

PATENT						CERTIFICATE			
No.	Vol.	To Whom Issued	Date			Acres	No.	Class	Character
			Month	Day	Year				

Rendered for Taxation

Year	By Whom Rendered	Acres	Value	Year	By Whom Rendered	Acres	Value

[R. S. Art. 7553.]

310. How Blanks Shall Be Filled by Assessor.—The blanks to be filled by the assessor with the abstract number, name of party to whom the certificate was issued, the number, class and character of the certificate, the name of the party to whom the patent issued, number of volume of patent, the month, day and year it was issued, and the number of acres each survey contains; which whole survey shall stand as a debit against the assessor. [R. S. Art. 7554.]

An assessment of unrendered property in the name of a former owner, whom the assessor knows is dead, is invalid under Article 7563 R. S. Coleman v. Crowdus (T. C. A.), 178 S. W. 585.

311. Manner of Assessing Blocks and Lots in Cities.—Each assessor shall be required to make an abstract of all the blocks or subdivisions of each of the cities or towns or villages of his county, in a book or books of at least four hundred and eighty pages each, to be furnished him by the commissioners' court of his county for that

purpose, with an index book to the same, which said book or books shall have a blank space for a diagram or plot of each block or subdivision, giving the number of the lots as per form following:

Block No..... Assessor's Abstract of City Lots in..... County, City of.....			
Year	Owner's Name	No. Lot	Value
Year	Owner's Name	No. Lot	Value

And the said assessor shall draw a plot of each block in the blank space left for that purpose, giving the number of each lot. And

the whole of said block or subdivision shall be a debit against the assessor. [R. S. Art. 7555.]

The purpose of this Article and of Art. 7563 is to cause property to be so described by the assessor as to identify it. *Haynes v. State*, 44 C. A. 492, 99 S. W. 408.

The lots of land must be definitely and distinctly described, and parol proof cannot supply the deficiency in the description of boundaries. These must be ascertained from what is written. The question is not one of intention, but of fact. What did the assessor do? On what specific lot was the tax laid? These questions must be answered from the record. *House v. Stone*, 64 Tex. 877.

Where two lots belong to one owner and from one parcel of land, they may be assessed for taxation together, in the absence of any constitutional or statutory provision to the contrary. *Guergin v. City of San Antonio*, 19 C. A. 98, 50 S. W. 140.

Where there was only one location in the county for a certain volunteer, and that of a tract of 269 acres, a description of the tract on the tax roll as his location of 320 acres, the tract being otherwise identified, was sufficient. *Barrett v. Spence*, 28 C. A. 344, 67 S. W. 921.

Tax assessment held not invalid because stating that tract contained less number of acres than it did in fact. *Kenson v. Gage*, 34 C. A. 547, 79 S. W. 605.

Where assessor adopted rendition by State treasurer of property for taxation, he made such rendition his assessment, and it sufficiently complied with the law. *State v. Fidelity & Deposit Co. of Maryland*, 35 C. A. 214, 80 S. W. 544.

Where the land is sufficiently identified therein, the assessment for taxation is valid, though it contains no certificate or survey number. *Taber v. State*, 38 C. A. 235, 85 S. W. 835.

Unless the several lots of a taxpayer are used together for one purpose and as one piece of property, he is entitled to have each lot assessed separately. *City of Houston v. Stewart*, 40 C. A. 499, 90 S. W. 49.

But a taxpayer held not entitled to complain of the assessment of several lots in bulk. *Id.*

A description in tax roll as "owner unknown, abstract No. —, certificate No. —, survey No. —; original grantee, —, city or town of Dallas, number of lot, 4; number of block, L; value, \$100; Cockrell's Fairland Addition"—is sufficient. *Haynes v. State*, 44 C. A. 492, 99 S. W. 405.

An assessment held to sufficiently describe the property sought to be assessed. *Slaughter v. City of Dallas* (Civ. App.), 103 S. W. 218.

No more particularity of description of property is required in a tax assessment than in a conveyance or a partition decree. *Slaughter v. City of Dallas*, 101 Tex. 315, 107 S. W. 48.

An assessment of a city lot held invalid for uncertainty of description. *Id.*

The rigid observance of statutory requirements respecting the description of property listed for taxation by an assessor, does not apply to lists filed by the property owner. *McMickle v. Rochelle* (Civ. App.), 125 S. W. 74.

An assessment of real estate which sufficiently describes the property as against the owner is sufficient as against a subsequent purchaser. *Slaughter v. City of Dallas* (Civ. App.), 103 S. W. 218.

312. Duties of Assessor as to Assessments of Lots and Blocks.—

Each assessor in this State, when he shall have made the assessment of his county for each year, shall on the first day of June of each year, or as soon thereafter as practicable, carry from each person's assessment the number of acres and its value on each survey of lands, lots or blocks to that particular survey, lot or block found on the abstract books provided in Articles 5110, 5111 and 5119 [7554, 7555 and 7563]; and that all the parts of each survey or block placed on said abstract books shall be a credit to the assessor on that particular survey. And said assessor shall deduct the total number of acres rendered on each survey or block from the total number of acres of the whole survey or block as is shown by said abstract; and, if any part is left unrendered, then he shall assess the same to the owner or owners thereof, if known, and, if unknown, then to "unknown owners," and the value thereof shall be affixed by him, sanctioned by the board of equalization; provided, that the owner or owners of any survey and grant of land may show by a survey, to be made by the county surveyor of the county, that the survey and grant in which they are interested does not contain the full complement of acres, showing how many acres are in fact embraced within the calls of the particular survey and grant. [R. S. Art. 7556.]

313. Assessor's Abstracts to Be Kept in Office.—The assessor's abstracts shall be kept in his office at the county seat of his county, as records of his office, and shall be at all times subject to the inspection of the public. The index book shall show the original grantee, the number of acres, the abstract number, and the volume and page in which each survey is placed. [R. S. Art. 7557.]

314. Lands Not on Abstract to Be Placed There.—Should there be any survey of lands, lots or blocks not on the abstract book or books which are by law subject to taxation, the assessor shall enter such lands, lots or blocks on the assessment list as though the same appeared on said abstract books. [R. S. Art. 7558.]

315. Shall Procure Certificate From Board of Equalization.—Each assessor of taxes shall procure from the board of equalization of his county a certificate that all the surveys and parts of surveys of lands in his county, and all the lots and blocks of the cities and towns in his county, are rendered for taxation; which certificate shall be forwarded to the Comptroller of this State before he shall issue to said assessor a draft on the tax collector of his county. And the same rule shall apply to the commissioners' court before they issue drafts on the county treasurer for his pay for assessing the county taxes. [R. S. Art. 7559.]

316. Substitute to Be Employed if Assessor Fails.—The board of equalization or the county commissioners' court shall, if the assessor fails to perform the duties required by this chapter within a reasonable time, employ some other competent person to have the requirements of this law carried out, and the compensation therefor shall be deducted from the assessor's pay for that year. [R. S. Art. 7560.]

An individual is not clothed with individual powers, by virtue of a contract with commissioners' court which employs him to perform the duties of the assessor. Art. 7560 R. S. *Rosenberg v. Lovett*, (T. C. A.), 173 S. W. 508.

An Act of the Legislature (Acts Twenty-ninth Legislature, ch. 130) which relates only to real estate does not authorize the commissioners' court to employ persons to discover omitted personal property, although under the Constitution, Art. 8, Sec. 1, and Revised Statutes Art. 7564 and 7570 and Final Title Sec. 3, the commissioners' court may employ persons to discover omitted personal property. *Rosenberg v. Lovett*, 173 S. W. 508.

The statute prescribes the duties and powers of an assessor, and he has no others. *State v. Cage* (T. C. A.), 176 S. W. 928.

A tax sale, under an assessment made by a clerk in the Comptroller's office is void, the assessment of taxes being a quasi judicial act, which cannot be delegated to a clerk by the Comptroller. *Morrow v. Connaway*, 157 S. W. 430, (T. C. A.)

It is not a governmental duty to discover and place on the assessment roll omitted personal property, and such duty is not placed upon any officer, but may be performed by any individual. *Rosenberg v. Lovett* (T. C. A.), 173 S. W. 508.

Art. 7566, *Vernon Sayles' Statutes*, 1914, which authorizes the assessment of omitted property, is not in conflict with the Constitution which prohibits the Legislature from exempting property from taxation. *State v. Cage*, (T. C. A.), 176 S. W. 928.

317. Comptroller to Carry Out Law in Unorganized Counties.—The Comptroller of this State shall be required to have this law carried out in the unorganized counties of this State, where lands are located. [R. S. Art. 7561.]

318. Manner and Form of Assessing Property for Taxes.—The manner and form for assessing property for taxation shall be substantially as follows, to-wit:

1. The name of the owner.
2. Abstract number.
3. From whom and how acquired.
4. The name of the original grantee.
5. The number of acres.
6. The value of the land.
7. The number of the lot or lots.
8. The number of the block.

9. The value of town lots.
10. The name of the city or town.
11. Number of miles of railroad in the county.
12. The value of railroads and appurtenances, including the proportionate amount of rolling stock to the county after the assessment of such rolling stock and its apportionment among the several counties by the Comptroller as hereinafter provided.
13. Number of miles of telegraph in the county.
14. Value of telegraph and appurtenances in the county.
15. Number and amount of land certificates, and value thereof.
16. Number of horses and mules and value thereof.
17. Number of cattle and value thereof.
18. Number of jacks and jennets, and value thereof.
19. Number of sheep and value thereof.
20. Number of goats and value thereof.
21. Number of hogs and value thereof.
22. Number of carriages, bicycles or tricycles, buggies or wagons of whatsoever kind and value thereof.
23. Number of sewing machines and knitting machines and the value thereof.
24. Number of clocks and watches and the value thereof.
25. Number of organs, melodeons, pianofortes, and all other musical instruments of whatsoever kind and value thereof.
26. The value of household and kitchen furniture over and above the amount of two hundred and fifty dollars.
27. Office furniture and the value thereof.
28. The value of gold and silver plate.
29. The value of diamonds and jewelry.
30. Every annuity or royalty, the description and value thereof.
31. Number of steamboats, sailing vessels, wharves, boats, barges, or other water craft, and the value thereof.
32. The value of goods and merchandise of every description which such person is required to list as a merchant in hand on the first day of January of each year.
33. The value of material and manufactured articles which such person is required to list as a manufacturer.
34. The value of manufactures, tools, implements and machinery other than boilers and engines, which shall be listed as such.
35. Number of steam engines and boilers and value thereof.
36. The amount of moneys of bank, banker, broker, stock jobber or any other person.
37. The amount of solvent credits of bank, banker, broker, stock jobber or any other person.

38. The amount and value of bonds and stocks other than United States bonds.

39. The amount and value of shares of capital stock companies and associations not incorporated by the laws of this State.

40. The value of property of companies and corporations other than property hereinbefore enumerated.

41. The value of stock and furniture of saloons, hotels and eating houses.

42. The value of every billiard, pigeon hole, bagatelle, and other similar table, together with the number thereof.

43. Every franchise, the description and value thereof.

44. The value of all other property not enumerated as above.
[R. S. Art. 7562.]

An assessment of property for taxes involves a listing of the property to be taxed and an estimation of the sums to guide the apportionment. *Sullivan v. Bitter*, 51 C. A. 604, 113 S. W. 193.

The assessment of taxes is a quasi judicial act which the comptroller may not delegate to a clerk, and, where an assessment for taxation is made by a clerk, a tax sale is void. *Morrow v. Conoway* (Civ. App.), 157 S. W. 430.

In assessing property for taxation the name of the owner must be given. *Connell v. State* (Civ. App.), 55 S. W. 981.

The franchise of a street railroad appurtenant to the use of its property are a part of its real estate and not subject to a separate tax. *State v. Austin & N. W. R. Co.*, 94 Tex. 530, 62 S. W. 1050.

The franchises of a street railroad appurtenant to the use of its property held not subject to a separate tax. *Dallas Consol. Electric St. Ry. Co. v. City of Dallas* (Civ. App.), 65 S. W. 201.

The description on the assessment roll of a city, "The * * * * Company franchise," is not sufficient. *Southwestern Telegraph & Telephone Co. v. City of San Antonio*, 32 C. A. 101, 73 S. W. 859.

The primary meaning or figures in the columns of tax rolls set apart for values held to be dollars, where there was nothing to show what they denoted. *Conklin v. City of El Paso* (Civ. App.), 44 S. W. 879.

No liability attaches against the owner of personal property for tax thereon when it was not assessed in his name. *Connell v. State*, 55 S. W. 980.

Description is sufficient when it furnishes the means by which the property can be identified from the description itself, or by use of extrinsic evidence to apply that description to the property. *Eustis v. City of Henrietta*, 90 Tex. 468, 39 S. W. 567. See also *Grace v. City of Bonham*, 2 T. C. R. 698.

Where there were two surveys in the same county in the name of the same grantee and for the same number of acres, an assessment against unknown owner by giving the abstract number, name of original grantee and number of acres not sufficient. *State v. Farmer*, 94 Tex. 232.

When the property is rendered by the owner, the same fullness of description is not required as if the assessment was against an unknown

owner or upon property not rendered by the owner. *Cooper Grocery Co. v. City of Waco*, 6 T. C. R. 52.

Where the whole of a survey was delinquent, and the whole of it assessed by number and grant, the fact that the number of acres was stated at 640, when it really contained 706, did not render the assessment invalid to any part of the survey. *Kenson v. Gage*, 9 T. C. R. 725.

When a survey of public school land was invalid on account of not being made contiguous to its alternate sections, and the survey was afterwards validated by the Act of April 7, 1897, the land is subject to payment of all the taxes levied against it prior to the validation of the survey. *Ruling of Attorney General*, p. 665, 1912-14.

It is perfectly clear that cotton held by buyers would not fall within the exemption of the Constitution and would therefore be subject to the articles of the statute quoted. The cotton would be subject to taxation. *Ruling of Attorney General*, p. 667, 1912-14.

319. Assessment of Property Not Rendered.—If the assessor of taxes discovers any real property in his county subject to taxation which has not been listed to him, he shall list and assess such property in the manner following, to-wit:

1. The name of the owner; if unknown, say "unknown."
2. Abstract number and number of certificate.
3. Number of the survey.
4. Name of the original grantee.
5. Number of acres.
6. The true and full value thereof.
7. The number of lot or lots.
8. The number of the block.
9. The true and full value thereof.
10. The name of the city or town, and give such other description of the lot or lots or parcels of land as may be necessary to better describe the same; and such assessment shall be as valid as if rendered by the owner thereof. [R. S. Art. 7563.]

A description of land in a tax roll which contains all the requirements under Art. 7563 R. S., except the survey number will be held sufficient to identify the land, when there is absence of evidence that there was more than one survey in the county in the name of the original grantee of the survey in question. *American Lumber Co. v. State*, 165 S. W. 467. (T. C. A.)

The authority for the officer's making the assessment is that the property has not been listed to him as declared in the statute, and the assessment should show in some appropriate manner that it was done by the assessor in accordance with such authority, and that the assessment thus made was of property within the category of such as was thus subject to taxation and had accordingly been assessed by him. *House v. Stone*, 64 Tex. 677.

Any requisite of this article need not be complied with, where good

cause is shown for such noncompliance. *State v. St. Louis S. W. Ry. Co.*, 43 C. A. 533, 96 S. W. 70.

The purpose of this Article and Art. 7555 is to cause the property to be so described by the assessor as that it can be identified. The latter has reference more particularly to acreage property and should not be made to control over this Article in assessing property which has been laid out into lots and blocks and made an addition to a city or town. It is sufficient if the description in the tax rolls taken in connection with the map addition is enough to identify the property on the ground. *Haynes v. State*, 44 C. A. 492, 99 S. W. 408.

The listing of the property on the tax rolls under a wrong name and omitting to give the survey number are fatal to the assessment and render the tax sale void. *Pfeuffer v. Bodies*, 42 C. A. 55, 93 S. W. 222.

The lots into which town or city blocks are subdivided are generally regarded as separate and distinct tracts or parcels of land, as much so as separate and distinct though adjoining surveys or grants in the county; and each lot should be separately assessed. *State v. Baker*, 49 Tex. 763.

The failure of an assessor in listing property for taxation to give the survey number of the grant as required by this Article renders subsequent proceedings to enforce collection of the tax illegal, unless good cause can be shown why the requirement of the statute in this regard was not complied with. It would be a sufficient description, when an entire survey is assessed, to give the owner's name if known, or to state that it is unknown, together with the abstract number, certificate number, survey number, name of original grantee and number of acres; but when only a portion of a survey is assessed, some further description is necessary in order to identify the particular portion assessed. *Morgan v. Smith*, 70 Tex. 637, 8 S. W. 528.

The assessment rolls are defective if they fail to give either the certificate or survey number of the tract, and no good reasons are shown why they were not given. *State v. Farmer (Civ. App.)*, 57 S. W. 86.

Where there are two tracts of land containing the same number of acres and having the same original grantee, the abstract number is not a sufficient description for the purpose of assessment. *State v. Farmer*, 94 Tex. 232, 59 S. W. 543, affirming (Civ. App.), 57 S. W. 86.

This Article simply requires that the number of miles of roadbed in the county and the full and true value thereof be given. The assessor could not be required to give a more particular description of the property in listing it for back taxes than the owner was required to give in rendering the same. *State v. St. Louis S. W. Ry. Co.*, 43 C. A. 533, 96 S. W. 70.

Assessment made against unknown owner, when the true owner is known, or is occupying the property, is void. *Hollywood v. Wellhausen*, 4 T. C. R. 967.

The lots into which town or city blocks are subdivided are generally regarded as separate and distinct tracts or parcels of land, and each lot should be separately assessed. *State v. Baker*, 49 Tex. 763.

It would be a sufficient description when an entire survey is assessed to give the owner's name, if known, or to state that it is unknown, together with the abstract number, certificate number, survey number, name of original grantee and number of acres; but, when only a portion of a survey is assessed, some further description is necessary in order to identify

the particular portion assessed. *Morgan v. Smith*, 70 Tex. 637, 8 S. W. 528.

The assessor may, after the taxpayer has made a rendition of property for taxes assess other property not rendered by the owner. *Galveston County v. Wharf Co.* 72 Tex. 557.

It is only when property has not been rendered that it can be assessed and placed on the unrendered roll, and this must be done by the assessor. The board of equalization can not direct him to do it. *Cook v. Railway Co.*, 24 S. W. 544.

For the requirements of a valid assessment under this Article, see *House v. Stone*, 64 Tex. 677.

When there are two tracts of land in the same county containing the same number of acres and having the same original grantee, the abstract number is not a sufficient description for the purpose of assessment. *State v. Farmer*, 94 Tex. 232, 59 S. W. 543.

320. Commissioners' Courts to Sit as Board of Equalization.—

The commissioners' courts of the several counties of this State shall convene and sit as boards of equalization on the second Monday in May of each year, or as soon thereafter as practicable before the first day of June, to receive all the assessment lists or books of the assessors of their counties for inspection, correction or equalization and approval.

1. They shall cause the assessor to bring them at such meeting all said assessment lists, books, etc., for inspection, and see that every person has rendered his property at a fair market value, and shall have power to send for persons, books and papers, swear and qualify persons, to ascertain the value of such property, and to lower or raise the value on the same.

2. They shall have power to correct errors in assessments.

3. They shall equalize improved lands in three classes, first-class to embrace the better quality of land and improvements, the second class to embrace the second quality of lands and improvements, and the third-class to embrace lands of but small or inferior improvements. The unimproved lands shall embrace first, second and third class, and all other property made as nearly uniform as possible.

4. After they have inspected and equalized as nearly as possible, they shall approve said lists or books and return same to the assessors for making up the general rolls, when said board shall meet again and approve the same, if same be found correct.

5. Whenever said board shall find it their duty to raise the assessment of any person's property, it shall be their duty to order the county clerk to give the person written notice who rendered the same, that they desire to raise the value of the same. It shall be their duty to cause the county clerk to give ten days written notice before their meeting by publication in some newspaper, but, if none is published in the county, then by posting a written or printed

notice in each justice's precinct, one of which must be at the court house door.

6. The assessors of taxes shall furnish to the board of equalization, on the first Monday in May of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refuse to swear or to qualify or to have signed the oath or affirmation as required by law, together with the assessment of said person's property made by him through other information; and the board of equalization shall examine, equalize and correct assessments so made by the assessor, and when so revised, equalized and corrected, the same shall be approved. [R. S. Art. 7564.]

The article provides that taxpayers shall have ten (10) days notice, and it has been held that the mailing of a postal card to the taxpayer is sufficient. *Graham v. Lasater*, 26 S. W. 472.

There are two cases on the question of notice in reports from the Supreme Court. In the first case the Supreme Court says that "a party desiring the equitable aid of the court on such a ground should show that he at the proper time and in the proper way demanded to be heard and offered to adduce evidence and was denied." *I. & G. N. Railroad Company v. Smith*, 54 Tex. 16. In the second case it was held that failure to give due notice to the taxpayer rendered an increase absolutely void. *City of San Antonio v. Hoefling*, 39 S. W. 918.

The question of whether it is the duty of the board of equalization to notify the taxpayers of the amount of the increase contemplated is discussed by the Court of Civil Appeals in the case of *Graham v. Lasater*, supra, and the court in that case said: "We are of opinion that this notice (which did not give the amount of the increase proposed) was all that was required by the law, and also that if any defect existed therein it was rendered unimportant by the personal appearance of the appellant and the full hearing given him by the board which may be that it would be somewhat fair for the board at its first meeting contemplated by the law, simply to decide in a general way as to whose assessments should be raised, and not decide as to the amount of such increase until the hearing or personal notice. This would enable it to enter upon the investigation when the evidence is offered freer from bias than it could do after a definite conclusion had already been attached. At the same time we find nothing in the law which prohibits the board, if it sees proper to do so, from indicating to the property owner the amount it thinks his assessment should be increased; and in favor of such course it may be said that in a great majority of cases the property owners will be satisfied with the amount thus indicated," etc.

In the case of *Lumber Company v. Jones*, 20 Civ. App. 208, the lumber company claimed that they had not been given a hearing on the raise of the taxes on account of illness of its agents. The court said: "The failure of the appellant to appear before the board of equalization and have its assessment corrected was not at all excused. Illness of its agent intrusted with the rendition of its property for taxation affords no excuse. Even if such failure *might be excused* under some circumstances, there is nothing in the fact stated in the petition that should excuse the appel-

lant for continuing to rely on its manager, who had been ill and not capable of attending to business for more than six (6) months, to render its property, or in failing to learn that the property had been placed on the unrendered roll at an excessive valuation."

Original signed assessment lists are admissible against the makers. *Jones v. Cummins*, 17 C. A. 661, 43 S. W. 854.

Where plaintiff had testified that he had accumulated by his practice property worth \$4,000 a year, defendant was not entitled to show that he had rendered his property for taxation at a much smaller sum. *International & G. N. R. Co. v. Goswick* (Civ. App.), 83 S. W. 423.

In proceedings by a railroad to condemn defendant's lot, testimony as to the value at which the lot was rendered for taxes held admissible as an admission on defendant's part. *Hengy v. Missouri, K. & T. Ry. Co. of Texas* (Civ. App.), 109 S. W. 402.

Evidence of plaintiff's valuation of the property for taxation which was less than the value claimed in the action held admissible as an admission against interest. *Gulf, C. & S. F. Ry. Co. v. Koch* (Civ. App.), 144 S. W. 1035.

A rendition for taxes, wherein an animal killed by a railroad company was listed, held admissible as an admission against plaintiff. *Ft. Worth & R. G. Ry. Co. v. Chisholm* (Civ. App.), 146 S. W. 988.

The statutes contemplate but two sessions of a board of equalization, one to convene on the second Monday in May to receive assessments and to equalize taxes, and the other to convene on or before the first day of August to approve the rolls; and a second session for the purpose of equalizing taxes is unauthorized. *Ruling of Attorney General*, p. 635, 1912-14.

If a property owner has been cited to appear and show cause why the valuation of his property shall not be raised to a certain sum, and he fails to appear and the board of equalization raises the valuation of his property to said sum, the board is unauthorized to cite him to appear again at a second session of the board and show cause why the valuation shall not be raised a second time. *Ruling of Attorney General*, p. 635, 1912-14.

"Assessment roll."—The town assessors made up a tax roll, compiled from the county assessor's rolls, which was adopted by the council, and thereafter they made assessment, shown by assessment lists, against residents who had rendered property for taxation, but whose names were not on the tax roll. Held, that the assessment list was not an "assessment roll," within this Article and Art. 7577. *Warrener v. Lambrecht* (Civ. App.), 146 S. W. 633.

The board has no power to add to or strike from the assessment roll property placed thereon by the assessor or omitted by him. *County of Galveston v. Galveston Gas Co.*, 72 Tex. 509, 10 S. W. 583; *County of Galveston v. Galveston Wharf Co.*, 72 Tex. 557, 10 S. W. 587; *Davis v. Burnett*, 77 Tex. 3, 13 S. W. 613; *San Antonio St. Ry. Co. v. City of San Antonio*, 22 C. A. 341, 54 S. W. 907; *Sullivan v. Bitter*, 51 C. A. 604, 113 S. W. 195.

The board has power to revise and increase the valuation of any property upon the assessment rolls. *Duck v. Peeler*, 74 Tex. 268, 11 S. W. 111. County boards of equalization have the power to raise and lower the value of property, and to correct errors in the assessments, and raising the value means raising the assessment. *San Antonio St. Ry. Co. v. City of San Antonio*, 22 C. A. 341, 54 S. W. 907.

Board of equalization cannot direct property rendered for taxes by the

owner to be listed as unrendered property. *Cook v. Railway Co.*, 24 S. W. 544, 5 C. A. 644.

The county commissioners' court constitute a board of equalization for the State and county and not for the city. *Scollard v. City of Dallas*, 16 C. A. 620, 42 S. W. 640.

After the approval of the roll by the board of equalization, it has no further jurisdiction in the matter and an order reducing the assessment is void for want of authority in the board to make the order. *Clawson Lumber Co. v. Jones*, 20 C. A. 208, 49 S. W. 909.

The commissioners' court sitting as a board of equalization is a regular session. *Abbott v. State*, 42 Cr. R. 8, 57 S. W. 98.

The term created by this Article is a regular and not a called term, so that a county tax could be levied at such term under Art. 2244. *Staten v. State*, 63 Cr. R. 592, 141 S. W. 525.

An admission "that defendant had notice of such raise in valuation" by the commissioners' court held an admission that he had due notice. *Masterson v. State*, 17 C. A. 91, 42 S. W. 1003.

The president or some officer of a national bank is required to furnish to the tax assessor of the county in which bank is located a list of all shareholders of stock, and the number and amount of shares of each. *Ruling or Attorney General*, p. 657, 1912-14.

Where a taxpayer does not object to an assessment, the board of equalization need not notify him to appear before it. *Clawson Lumber Co. v. Jones*, 20 C. A. 208, 49 S. W. 909.

The fact of a corporate officer's sickness held no excuse for failure of the corporation to appear before the board of equalization and object to an assessment. *Id.*

A national bank may be held liable for the taxes on the value of its stock as voluntarily rendered, but an equalization board could not, without its consent, augment its conceded liability. *First Nat. Bank v. City of Lampasas*, 33 C. A. 530, 78 S. W. 42.

Where an assessment of property to plaintiff by a board of equalization was void, he was not bound to apply to the board for relief before suing to have the assessment annulled and the tax enjoined. *Sullivan v. Bitter*, 51 C. A. 604, 13 S. W. 193.

The action of the board of equalization in revising or increasing the valuation of property is final. *Duck v. Peeler*, 74 Tex. 268, 11 S. W. 1111; *Johnson v. Holland*, 17 C. A. 210, 43 S. W. 71.

Whether property assessed for taxation has been undervalued cannot be determined by the courts; the action of the assessor and the commissioners' court being *res judicata*. *State v. Coutts' Estate* (Civ. App.), 149 S. W. 281.

In an action to recover taxes the fraud of a board of equalization in raising an assessment may be pleaded as a defense in a suit to recover taxes. *Mann v. State*, 18 C. A. 701, 46 S. W. 652.

Failure of a tax assessor to list certain property and present the list to the commissioners' court for approval held not to render assessment void. *Haynes v. State*, 44 C. A. 492, 99 S. W. 405.

The board of equalization is not required to set forth the classification of each assessment list. *Graham v. Lasater*, 26 S. W. 472.

It is not necessary to sustain the action of the board of equalization in revising a valuation upon the assessment roll that an order of the board

making such change be entered on the minutes. *Duck v. Peeler*, 74 Tex. 268, 11 S. W. 1111.

The notices required to be given by this article are conditions precedent to the right of the board to raise the assessment. *Ry. Co. v. Randolph*, 24 Tex. 317.

The notice required by this article may be given by mailing a postal card to the taxpayer. *Graham v. Lasater*, 26 S. W. 472.

The proceedings of the board are not invalid by a continuation of the session into July. *Graham v. Lasater*, 26 S. W. 472.

The board of equalization has no power to add to the rolls property not previously assessed, nor to take from them property which they embrace. *Galveston County v. Gas Co.*, 72 Tex. 509, 10 S. W. 583; *Davis v. Burnett*, 77 Tex. 3, 13 S. W. 613; *Galveston County v. Wharf Co.*, 72 Tex. 557, 10 S. W. 587.

The board cannot direct property rendered by the owner for taxation to be listed as unrendered property. *Cook v. Ry. Co.*, 24 S. W. 544.

The action of the board in raising the valuation of property is final. *Ry. Co. v. Harrison County*, 54 Tex. 119; *Duck v. Peeler*, 74 Tex. 268, 11 S. W. 1111.

The commissioners' court has no power in advance of an assessment by the assessor over the question of the valuation of property for the purpose of taxation. *Opinion of Attorney General*.

Board of equalization should value property at its fair market value, and could not value certain buildings in a city according to the valuations of other buildings in the same block. Taxation shall be equal and uniform. *Ruling of Attorney General*, p. 638, 1912-14.

321. Assessment of Real Property for Previous Years.—If the assessor of taxes shall discover in his county any real property which has not been assessed or rendered for taxation for any year since 1870, he shall list and assess the same for each and every year for which it has not been assessed, in the manner prescribed in the preceding article; and such assessment shall be as valid and binding as though it had been rendered by the owner thereof; but no such real property shall be assessed by the assessor, unless he has ascertained by the certificate of the Comptroller of Public Accounts the fact that the records of his office do not show that the property has been rendered or assessed for the year in which he assesses it. [R. S. Art. 7565.]

The words "preceding article" in the above would seem to refer to Sec. 319.

For property of a railroad within a common school district that has not been assessed for previous years, it is the duty of the tax assessor under Article 7565, and in compliance with said article, to assess such property for back taxes. Intangible assets and rolling stock of railroads are not subject to local school district taxes. *Ruling of Attorney General*, p. 617, 1912-14.

322. Assessment of Back Taxes on Personal Property.—If the assessor of taxes shall discover in his county any property, or, outside of his county but belonging to a resident of the county, and personal property which has not been assessed or rendered for taxation every year for two years past, he shall list and assess the same for each and every year thus omitted which it has belonged to said resident, in the manner prescribed for assessing other property; and such assessment shall be as valid and binding as though it had been rendered by the owner thereof. [R. S. Art. 7566.]

NOTE.—See other citations under other sections herein bearing on question.

See *Brundrett v. Lucas*, 194 S. W. 613.

This article is not effective as to assessing stock outside of the county in which it is situated, since Art. 7512 has been added to the statutes providing for listing stock in the county in which it is situated. *Cammack v. Matador Land & Cattle Co.*, 30 C. A. 421, 70 S. W. 455, 456.

An assessment under this article which does not assess the property in the owner's name is void. *Connell v. State* (Civ. App.), 55 S. W. 980.

Personal property must be assessed in the same manner prescribed for assessment for other property. *Id.*

Under this Article no liability attaches against the owner of personal property for a tax thereon, where it was not assessed in his name. *Connell v. State*, 55 S. W. 980.

The tax assessor has no power to list and assess unassessed personal property beyond two years back of the current year. Opinion of Attorney General.

Article 7566 of Vernon Sayles' Civ. Stat. (1914), which authorized the assessment of omitted personal property is not in violation of Sec. 1 of Art. 8 of the Constitution which requires all taxation to be equal and uniform, notwithstanding Article 7702 in regard to the assessment of omitted real property. *State v. Cage* (T. C. A.), 176 S. W. 928.

323. Duty of Collectors Regarding Unlisted Property; Supplemental Roll.—Collectors of taxes of counties, cities and towns, when any taxpayer applies to them for the purpose of ascertaining the amount of his taxes, and the collector finds that his name or his property does not appear on the tax roll, shall, and it is hereby made their duty to, assess said taxpayer then and there, collect the taxes and enter the same upon a supplemental tax roll to be made by him. He shall make out, on forms to be furnished by the Comptroller, three copies of such supplemental roll, one copy to be delivered to the Comptroller of Public Accounts, one to be delivered to the county clerk, and one to be filed in the collector's office. Said supplemental tax roll shall be made out and delivered to the county commissioners' court with all other papers pertaining to the final settlement of said tax collector, and the same shall be examined and approved by the

county commissioners' court, in like manner as upon the tax roll of the tax assessor. The collectors of taxes are hereby authorized and empowered to administer all oaths necessary to obtain a full and correct assessment of all taxable property assessed by them under this Act. The oath shall be the same as is administered by tax assessors under existing law. The collector of taxes shall receive the following compensation for his services on all assessments made by him under this Act, to-wit: For assessing the State and county taxes, four cents for each one hundred dollars of property so assessed, and for assessing the poll tax, five cents for each poll; which fee shall be paid in the same way as the tax assessor's fee in Article 5133 [7583]. [R. S. Art. 7567.]

Under this article it is immaterial whether the person himself offers to pay the tax or whether some agent makes the offer for him. Hence, if A calls on the collector to pay B's taxes, and it is ascertained that B has not been assessed, the collector is authorized and required to assess the taxes due by B, and thereafter the payment of the tax may be enforced as in any other case. Opinion of Attorney General.

The collector is not entitled to any commissions for making assessments under this article until the taxes on the assessments are collected. Ruling of Comptroller.

On January 30, 1902, upon a statement furnished by him by the State Treasurer, the tax collector of Travis County assessed for taxation for the years 1898, 1899, 1900 and 1901 certain securities deposited by a foreign guaranty and surety company with the State Treasurer, and entered the assessment on his supplemental roll as provided in this article. The assessment held to have been properly made. *State v. Fidelity & Deposit Co.*, 80 S. W. 544.

Tax assessor and collector may either assess unrendered personal property for more than two years back. Ruling of Attorney General, p. 624, 1912-14.

324. Assessor to Follow Instructions.—The assessors of taxes, in the execution of their duties, shall use the forms and follow the instructions which shall from time to time be prescribed by the Comptroller of Public Accounts, and furnished to them by the county judge in pursuance of law. [R. S. Art. 7568.]

See *Woolen v. State* (Civ. App.), 105 S. W. 1165.

A general order by the comptroller directing the tax upon cattle feeding in a pasture which lies in two counties to be paid in the county where the owner resides is valid. *Court v. O'Connor*, 65 Tex. 334.

Persons rendering their property for taxation in accordance with such regulations comply with the law and their property is free from taxation in any other county than the one in which it is rendered. *Id.*

A direction to an assessor to assess mineral rights served from the surface is a conveyance held not to render such assessment invalid for inequality. *State v. Downman* (Civ. App.), 134 S. W. 787.

The instructions of the Comptroller to assessors "not to tax railroad bridges separately as bridges, but to include all bed as railroad, whether built on the ground or on bridges," is binding on the assessor of taxes, and the rendition by the taxpayer of property for taxation in accordance with the instructions was a compliance with the law. *Cook v. Ry. Co.*, 24 S. W. 544. See also *Court v. O'Connor*, 65 Tex. 334.

325. Assessment or Payment of Taxes May Be Proven, How.—Whenever in any cause it may be material to prove the assessment of any property for taxes, or the payment of any taxes, the certificate of the Comptroller of such assessment from the rolls deposited in his office, or that the payment of such taxes is shown by the records of his office, shall be admissible in evidence to prove the same. [R. S. Art. 3708.]

326. Equalization of Assessments—How Arrived at.—Hereafter when any person, firm or corporation renders his, their or its property in this State for taxation to any tax assessor, and makes oath as to the kind, character, quality and quantity of such property, and the said officer accepting said rendition from such person, firm or corporation of such property is satisfied that it is correctly and properly valued according to the reasonable cash market value of such property on the market at the time of its rendition, he shall list the same accordingly; but, if the assessor is satisfied that the value is below the reasonable cash market value of such property, he shall at once place on said rendition opposite each piece of property so rendered an amount equal to the reasonable cash market value of such property at the time of its rendition, and, if such property shall be found to have no market value by such officer, then at such sum as said officer shall deem the real or intrinsic value of the property; and, if the person listing such property or the owner thereof is not satisfied with the value placed on the property by the assessor he shall so notify the assessor, and if desiring so to do may make oath before the assessor that the valuation so fixed by said officer on said property is excessive; then it shall be the duty of such officer to furnish such rendition, together with his valuation thereon and the oath of such person, firm or officer of any corporation, if any such oath has been made, to the commissioners' court of the county in which said rendition was made, which court shall hear evidence and determine the true value of such property as is hereinafter provided; and in this connection it is provided that such officer or court shall take into consideration what said property could have been sold for any time within six months next before the rendition of said property. [R. S. Art. 7569, Acts of 1907, p. 459.]

Fact that property was assessed at less than its real value does not show discrimination. *Brundrett v. Lucas*, 194 S. W. 613.

Under Rev. St. 1911, held not necessary to equalization by board that assessor make complaint. *Brundrett v. Lucas*, 194 S. W. 613.

Under Rev. St. 1911, Arts. 7569, 7570, held, that method indicated in Article 7570 must be followed whether the issue is raised by the board or by controversy between assessor and owner. *Brundrett v. Lucas*, 194 S. W. 613.

Oath of the taxpayer is not prerequisite to procedure as to witness when board of equalization on its own motion undertakes to raise values. *Id.*

Property owner who attended meeting and objected to raising of his assessment waived all defects in notice, and order entered at such meeting cannot be attacked for defects in proceedings antedating such meeting. *Brundrett v. Lucas*, 194 S. W. 613.

Evidence held to show that at equalization hearing no testimony of value of land was taken other than that of the property owner's witnesses, so that increase was unwarranted. *Brundrett v. Lucas*, 194 S. W. 613.

Under Rev. St. 1911, Arts. 7569, 7570, board of equalization could not legally disregard testimony of value introduced on ground that it was not believed, but, if it fails to summon witnesses of its own must fix values according to evidence actually introduced. *Brundrett v. Lucas*, 194 S. W. 613.

Under Rev. St. 1911, Arts. 7569, 7570, where board of equalization failed to summon witnesses of its own, property owner could not rely upon such failure to invalidate proceedings. *Id.*

Action of board of equalization in disregarding testimony introduced which was not disputed nor impeached, contrary to Rev. St. 1911, Arts. 7569, 7570, is basis for a suit to enjoin collection of taxes on the increased value. *Id.*

Where board of equalization failed to summon witnesses, but raised assessments in face of evidence showing that they should not be raised, district court in suit to enjoin collection of assessment could only set it aside. *Brundrett v. Lucas*, 194 S. W. 613.

327. Boards May Equalize Without Complaint.—The boards of equalization shall have power, and it is made their official duty, to supervise the assessment of their respective counties, and, if satisfied that the valuation of any property is not in accordance with the laws of the State, to increase or diminish the same and to affix a proper valuation thereto, as provided for in Article 7569 of this chapter; and, when any assessor in this State shall have furnished said court with the rendition as provided for in Article 7569 of this chapter, it shall be the duty of such court to call before it such persons as in its judgment may know the market value or true value of such property, as the case may be, by proper process, who shall testify under oath the character, quality and quantity of such property, as well as the value thereof. Said court, after hearing the evidence, shall fix the value of such property in accordance with the evidence so introduced and as provided for in Article 7569 of this chapter; and their action in such case or cases shall be final. [R. S. Art. 7570.]

The remedy against the illegal act of an assessor in raising an assessment without authority is by application to the board of equalization. *Duck v. Peeler*, 74 Tex. 268, 11 S. W. 1111.

The action of the board is not final if the assessment is unreasonably excessive and fraudulently made. *Johnson v. Holland*, 43 S. W. 71.

Commissioners' court of county without authority to alter a valuation fixed by it upon property, while sitting as a board of equalization, even though it might appear that such valuation at the time fixed by said court was excessive. *Ruling of Attorney General*, p. 637, 1912-14.

While in assessing bank stock for taxation to the holders, shares of stock held by the bank in industrial corporations should be considered, the stockholders of national banks have no right to deduct from the assets of the bank the value of United States bonds, in assessing their shares for taxation. *Brown v. First National Bank of Corsicana (T. C. A.)*, 175 S. W. 1122.

328. Penalty for Neglect of Duty by Assessor.—If any tax assessor in this State shall fail, refuse or neglect to place upon any rendition as provided for in Article 7569 of this chapter, the true value or market value in accordance with the method of fixing such value as provided for herein, or shall fail, refuse or neglect to return to the commissioners' court such rendition, together with the oath of the owner or person listing such property for taxes when such oath has been made, as provided for in this chapter, or, if the assessor accepts the rendition from any person rendering property for taxation without reading to such person the oath and having it signed and sworn to as provided by law, such failure, refusal or neglect shall be deemed malfeasance on the part of such officer, and shall be cause for his removal from office. [R. S. Art. 7571.]

329. Oath to Be Taken by Tax Assessor.—Every tax assessor and deputy tax assessor in this State, in addition to the oath prescribed by the Constitution of this State, shall, before entering upon the duties of his office, take and subscribe to the following oath: "I, _____, tax assessor (or deputy tax assessor, as the case may be) in and for _____ county, Texas, do solemnly swear that I will personally view and inspect all the real estate and improvements thereon subject to taxation lying in said county that may be rendered to me for taxation by any corporation or individual, or by their agent or representative, as fully as may be practicable, and that I will, as fully as is practicable, view and inspect all other taxable property in said county rendered to me as aforesaid; that I will to the best of my ability make a true estimate of the cash value, the market value of such property, if such property has a market value, and if it has no market value, then the real value of all such property, both real and personal, on the first day of January next preceding; and that I will make up and attach to each assess-

ment sheet made up and sworn to by said property owners, their agents or representatives, a true assessment and valuation of said property, together with a memoranda of all facts which I may learn bearing upon the value of said taxable property, and that I will make all possible inquiry relative to the true value of such property; and that I will attach said memoranda and statement of facts that I may ascertain as aforesaid to the said assessment sheets of the respective property owners. That I have read and understand the several provisions of the Constitution and laws of this State relative to the valuation of taxable property, and that I will faithfully do and perform every duty required of me as tax assessor (or deputy tax assessor), by the Constitution and laws of this State. So help me God." This oath shall be administered by the county clerk and shall be in duplicate; the original shall be by the clerk filed and recorded in the records of the county, and the duplicate shall be retained by the assessor, or the deputy, as the case may be. [R. S. Art. 7572.]

330. Oath to Be Taken by Members of Board of Equalization.—When a commissioners' court in this State convenes as a board of equalization before considering the subject of equalization of property values for the purposes of taxation, each member of the court, including the county judge, shall take and subscribe to the following oath: "I, _____, a member of the board of equalization of _____ county, for the year A. D. _____, hereby solemnly swear that, in the performance of my duties as a member of such board for said year, I will not vote to allow any taxable property to stand assessed on the tax rolls of said county for said year at any sum which I believe to be less than its true market value, or, if it has no market value, then its real value; that I will faithfully endeavor and as a member of said board will move to have each item of taxable property which I believe to be assessed for said year at less than its true market value, or real value, raised on the tax rolls to what I believe to be its true cash market value, if it has a market value, if not, then to its real value; and that I will faithfully endeavor to have the assessed valuation of all property subject to taxation within said county stand upon the tax rolls of said county for said year at its true cash market value, or, if it has no market value, then its real value. I further solemnly swear that I have read and understand the provisions contained in the Constitution and laws of this State relative to the valuation of taxable property, and that I will faithfully perform all the duties required of me under the Constitution and laws of this State. So help me God." Said oath shall be filed and recorded

in the commissioners' court record as a part of the proceedings of that term of court. [R. S. Art. 7573.]

NOTE.—The above article is a part of what is commonly known as the "full rendition law."

Under this Article and Const. Art. 8, Sec. 1, requiring all property to be taxed in proportion to its value, where bank stock is assessed at full value and land at 50 per cent of its value, there is an unlawful discrimination against holders of bank stock, entitling them to enjoin the collection of the taxes on bank stock. *Porter v. Langley* (Civ. App.), 155 S. W. 1042.

331. Neglect of Duty Cause for Removal From Office; Attorney General to File Suit.—If, in passing upon the value of any property by a commissioners' court sitting as a board of equalization in this State, the court shall fix a value upon any property for the purpose of taxation and a minority of said court do not concur in the judgment of the court, the clerk shall record in the minutes of the court the names of the members, including the county judge, who do not concur in fixing such values (if the county judge shall cast the deciding vote in such matter); and, if any tax assessor or members of any commissioners' court in this State shall knowingly fail or refuse to fix the value of property rendered for taxes in compliance with this chapter, and all other laws of this State, such failure, neglect or refusal shall constitute malfeasance in office on the part of such assessor or member or members of said court, and such failure, neglect or refusal shall be cause for his or their removal from office. Whenever the fact is brought to the knowledge of the Attorney General of this State that any tax assessor, deputy tax assessor, county judge, or member of the commissioners' court, has failed, refused or neglected to comply with the provisions of this chapter, he shall at once file suit for the removal from office of such officer or officers thus offending. Such proceedings for the removal of such officer or officers herein provided for shall be brought in the district court of the county of such officer's residence; and such suit shall be brought by the Attorney General of the State or under his direction. [R. S. Art. 7574.]

332. Assessor to Furnish List of Delinquents.—The assessor of taxes shall furnish the board of equalization on the first Monday in June of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refused to swear or to qualify, or to sign the oath or affirmation, as prescribed in this title; also a list of the names of those persons who refused to render a list of taxable property as required by this title. And should any person so failing or refusing to take the oath prescribed, or to render a list of

their property, or to subscribe to the oath, as required by the provisions of this title, fail to give satisfactory reasons for such failure or refusal to the board of equalization within one month from the date of the filing of said list by the assessor, as required by this article, the board of equalization shall return a list of all persons who have failed to give satisfactory reasons for such failure or refusal to render, qualify or subscribe to the oath or affirmation, as the case may be, to the assessor of taxes, who shall present the said list to the grand jury of his county next impaneled after the board of equalization has furnished him with the list above required. [R. S. Art. 7575.]

333. Assessor to Submit Lists to Board of Equalization.—The assessor of taxes shall submit all the lists of property rendered to him prior to the first Monday in June to the board of equalization of his county on the first Monday in June, or as soon thereafter as practicable, for their inspection, approval, correction or equalization; and, after the board of equalization shall have returned the corrected and approved lists of taxable property, the assessor of taxes shall proceed to assess all the unrendered property of his county as provided for in this title, and shall proceed to make out and prepare his rolls or books of all the real and personal property listed to him, in the form and manner prescribed by the Comptroller of the State. [R. S. Art. 7576.]

Under this Article and Arts. 7542, 7547, 7577, tax rolls are to be made up from lists by the assessors, made out from information furnished by property owners. *Lofton v. Miller* 55 C. A. 253, 118 S. W. 911.

The board has no power to strike from the rolls property placed thereon by the assessor. *Galveston County v. Gas Co.*, 72 Tex. 509, 10 S. W. 583; *Galveston County v. Wharf Co.*, 72 Tex. 557, 10 S. W. 587.

The remedy against the illegal act of an assessor in raising an assessment is by application to the board of equalization. *Duck v. Peeler*, 74 Tex. 268, 11 S. W. 1111.

The board has power to revise and increase the valuation of any property upon the assessment roll. *Id.*

Objection to payment of tax can not be made on the ground that there is no board of appeals to pass on objections to assessments. *Scollard v. City of Dallas*, 42 S. W. 640.

The county commissioners' court constitute a board of equalization for the State and county, and not for the city. *Id.*

334. Assessor Shall Make Out Rolls in Triplicate.—As soon as the board of equalization shall have examined, corrected and approved the assessor's list, the assessor of taxes shall prepare and make out a roll or book, as may be required by the Comptroller, from the list so corrected and approved, and three exact copies of the same, the

original to be furnished to the collector of taxes, the second to the Comptroller of Public Accounts, and the third to be filed in the county clerk's office for the inspection of the public. He shall also prepare a roll or book, and two exact copies thereof, to be distributed, the first to the collector of taxes, the second to the Comptroller, the third to be filed in the county clerk's office, of all the real and personal property which has not been listed to him. [R. S. Art. 7577.]

335. Assessor Shall Also Make Out Rolls of Unrendered Property.—The assessor of taxes shall, after his list of unrendered real and personal property shall have been examined, corrected and approved by the board of equalization as provided by law, prepare and make out his rolls or books of all unrendered real and personal property listed by him in the manner and form prescribed by the Comptroller of the State. [R. S. Art. 7578.]

336. Assessor's Duty to Add up Columns.—The assessor of taxes shall add up and note the aggregate of each column on his roll or book, and he shall also make in each book or roll, under proper headings, a tabular statement showing the footings of the several columns upon each page, and he shall add up and set down under the respective headings the total of the several columns. [R. S. Art. 7579.]

337. Return and Oath of the Tax Assessor.—The assessor of taxes shall, on or before the first day of August of each year for which the assessment is made, return his rolls or assessment books of the taxable property rendered to him or listed by him for that year, after they have been made in accordance with the provisions of this title, to the county board of equalization, verified by his affidavit, substantially on the following form:

The State of Texas,}
County.}

I, _____, assessor of _____ county, do solemnly swear that the rolls (or books) to which this is attached contain a correct and full list of the real and personal property subject to taxation in _____ (fill the blank with the name of the county) county, so far as I have been able to ascertain the same; that I have sworn every person listing property to me in the county, or caused the same to be done in manner and form as provided by law, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is the true and correct valuation thereof as ascertained by law, and the footings of the several columns in

said books and the tabular statement returned is correct, as I verily believe. [R. S. Art. 7580.]

Parol evidence is not admissible to prove the indorsement on the assessor's tax roll required by this Article. *Clayton v. Rehm*, 67 Tex. 52, 2 S. W. 45.

A supplemental roll for a given year is not admissible in evidence when it lacks the affidavit of the assessor, required by this Article. *Taber v. State*, 38 C. A. 235, 85 S. W. 835.

The remedy against the illegal act of an assessor in raising an assessment without authority is by application to the board of equalization. *Duck v. Peeler*, 74 Tex. 268, 11 S. W. 1111.

338. All Lists, Etc., Filed in County Clerks Office.—The assessor of taxes shall at the same time deliver to the board of equalization all the lists, statements of all property which shall have been made out or received by him, and arranged in alphabetical order, together with the roll withdrawn to aid him in the past assessment. The lists and statements shall be filed in the county clerk's office, and remain there for the inspection of the public. [R. S. Art. 7581.]

Statutes in regard to admission of copies of records or written instruments held to apply only to those certified to by the clerks of the county courts of this State. *Halliday v. Lambought*, 29 C. A. 226, 68 S. W. 712.

The record of the rendition of each taxpayer is required to be kept in the county clerk's office. The custodian of the same can identify it, and it is admissible in evidence without the three days' statutory notice required in the admission of deeds. *Frazier v. State* (Civ. App.), 81 S. W. 533.

339. Rolls, How Distributed and Filed.—After the board of equalization shall have examined the rolls or assessment books and made all corrections, if any be necessary, the assessor shall send one copy of each to the Comptroller of Public Accounts, one copy of each to the collector of his county, and he shall file the other copies in the county clerk's office until the next assessment, when the assessor shall have the right to withdraw them and use as provided in this title. [R. S. Art. 7582.]

An assessment roll does not fix any liability on the taxpayer or his property until the list has been approved by the board of equalization. *Chisholm v. Adams*, 71 Tex. 678, 10 S. W. 336.

340. Commissions and Compensation of Assessor.—Each assessor of taxes shall receive the following compensation for his services, which shall be estimated upon the total values of the property assessed, as follows: For assessing the State and county tax, on all sums for the first two million dollars or less, five cents on each one hundred dollars of property assessed; and on all sums in

excess of two million dollars and less than five million dollars, two and one-fourth cents on each one hundred dollars; and on all sums in excess of five million dollars, one and seven-tenths cents on each one hundred dollars; one-half of the above fees shall be paid by the State and one-half by the county; and for assessing the poll tax, five cents for each poll, which shall be paid by the State. The commissioners' court may allow to the assessor of taxes such sums of money, to be paid monthly from the county treasury, as may be necessary to pay for clerical work, taking assessments and making out the tax rolls of the county, such sums so allowed to be deducted from the amount allowed to the assessor as compensation upon the completion of said tax rolls; provided, the amount allowed the assessor by the commissioners' court shall not exceed the compensation that may be due by the county to him for assessing. [R. S. Art. 7583.]

An order of the county commissioners' court approving a tax roll the determination as to assessor's compensation could not be attacked in a suit by him against the county to recover the amount due. *Dimmit County v. Cavender* (Civ. App.), 65 S. W. 881.

Assessors are not mentioned in Section 7 of Chapter 5, Acts of the First Called Session of the Twenty-fifth Legislature, and, therefore, their fees are not affected by the number of votes cast in the county. Ruling of Comptroller.

341. Compensation of Assessor.—How Paid by State.—The Comptroller, on receipt of the rolls, shall give the assessor an order on the collector of his county for the amount due him by the State for assessing the State taxes, to be paid out of the first money collected for that year. [R. S. Art. 7584.]

342. Compensation of Assessor; How Paid by County.—The commissioners' court shall issue an order on the county treasurer of their county, to the assessor, for the amount due him for assessing the county tax of their county, to be paid out of the first money received from the collector on the rolls of that year. [R. S. Art. 7585.]

The order of the commissioners' court approving a tax roll the determination as to assessor's compensation could not be attacked in a suit by him against the county to recover the amount due. *Dimmit County v. Cavender* (Civ. App.), 65 S. W. 881.

The order of the commissioners' court approving the assessment rolls is tantamount to an adjudication of the amount the assessor is entitled to receive as compensation, and can not be attacked by him in a suit against the county for his fees, nor inquired into. *Dimmit County v. Cavender*, 65 S. W. 881.

343. Penalties for Neglect of Duty by Assessor.—Should any assessor of taxes fail or neglect to make out and return his rolls or books to the commissioners' court in the time and manner provided for in this chapter, it shall be competent for the commissioners' court to deduct from his compensation such amount as they may deem proper and right for such neglect or failure; and, should his rolls or books, when presented for approval to the commissioners' court, prove to be imperfect or erroneous, the court shall have the same corrected or perfected, either by the assessor or some other person than the assessor of taxes. Such person so employed by the commissioners' court shall be entitled to such part of the commissions to which such assessor is entitled as the court may allow; and said court shall so certify to the Comptroller, who shall pay such person in the same manner as the assessor of taxes is paid; and the amount so paid shall be deducted by the Comptroller from the commissions of the assessor of taxes, whose duty it was to have performed such work. [R. S. Art. 7586.]

344. Lands of Non-Residents in Unorganized Counties; How Assessed.—Lands lying in and owned by non-residents of unorganized counties, and lands lying in the territory not laid off into counties, shall be assessed by the Comptroller of Public Accounts in accordance with such regulations as he may adopt and establish for that purpose. [Const., Art. 8, Sec. 12; R. S. Art. 7587.]

Acts 1895, c. 42 (amended in 1897 and embodied in Chapter 15 of this Article), providing for the collection of taxes, did not repeal Arts. 7594-7596, originally enacted in 1879, since the Act of 1895 only sought to regulate the collection of taxes such as has been and were thereafter to be assessed and collected by local officers, who, before the passage of that Act were not empowered to collect any of the taxes, provision for the collection of which was made by Arts. 7587-7604, also dating from 1879. *Wolfrath v. De Lay* (Civ. App.), 142 S. W. 617.

The proceedings provided for by Arts. 7587-7604, relating to the sale of lands of non-residents in unorganized counties for non-payment of taxes, and the notice of sale prescribed thereby, when substantially complied with, constitute due process of law. *Wolfrath v. De Lay* (Civ. App.), 142 S. W. 617.

The acceptance by the Comptroller of a rendition of land for taxation by a non-resident, in an unorganized county, does not prevent the county, upon its subsequent organization, from collecting the taxes where same have not been actually paid to the Comptroller and the organization of the county affected prior to June 1st of that year. *Cattle & Land Co. v. Love*, 21 S. W. 574.

345. Lands in Unorganized Counties; How Assessed.—All lands and other property situated in the unorganized counties of this State, owned by residents of such unorganized counties, shall be

assessed by the assessor of the organized county to which such unorganized county is attached for judicial purposes, and the taxes collected by the collector of such organized county; and the same remedies for the enforcement of the assessment and collection of such taxes shall apply as the law directs for the assessment and collection of the taxes on property situated in organized counties of this State. [R. S. Art. 7588.]

Acts Twenty-fourth Legislature, c. 42 (amended in 1897 and embodied in Chapter 15 of this Article), concerning collection of delinquent taxes, and relating to residents of counties unorganized and residents and non-residents of organized counties, does not repeal Acts Sixteenth Legislature, c. (Arts. 7588-7604), referring to non-residents of unorganized counties owning land therein, authorizing the Comptroller to assess and collect such taxes, and pointing out the method to be pursued. *De Lay v. Wolfrath* (Civ. App.), 154 S. W. 1030.

No special legislation is necessary to determine who shall assess taxes in unorganized counties. Constitution, Article 8, Section 12; *Lee v. Fleming*, 1 App. C. 1128.

Personal property situated in an unorganized county is taxable in the county to which it is attached for judicial purposes. *Cattle Co. v. Faught*, 69 Tex. 402, 5 S. W. 494.

If the county is organized after the taxes are assessed and before they are collected the collector of the newly organized county may collect them. *Lee v. Fleming*, 1 App. C. 1128.

See the case of *Magnolia Land & Cattle Company v. Love*, 21 S. W. 574.

346. Duties of Comptroller in Relation to Lands in Unorganized Counties.—The Comptroller of the State is authorized, empowered and required to assess and collect the State and county taxes on all lands in this State which are situated in unorganized counties thereof and owned by non-residents thereof, in the manner hereinafter provided. [R. S. Art. 7589.]

347. When Comptroller May Receive Such Assessments.—The Comptroller may at any time prior to the return of the assessment rolls to his office of the organized county to which such unorganized county or counties are attached for judicial purposes, receive the assessment of and collect the taxes on any lands situated in such unorganized county or counties which are owned by non-residents thereof. [R. S. Art. 7590.]

348. Duty of Comptroller on Receipt of Rolls.—As soon as the tax rolls of the organized county to which unorganized counties are attached for judicial purposes shall have been received by the Comptroller, he shall, by comparing the lands rendered to the assessor of the organized county by the residents of such unorganized county or counties with those previously rendered to him by non-residents, make out a list of all unrendered lands situated in such

unorganized county, and place such value upon the lands thus found to be unrendered as he, as a sworn officer, may deem just and fair; provided, nothing in this law shall be so construed as to prevent the Comptroller from receiving the assessment and taxes due at any time prior to the completion of the unrendered list of such unorganized county. [R. S. Art. 7591.]

The provisions of this Article must be complied with before the comptroller can make a valid sale. *Keenan v. Slaughter*, 49 C. A. 180, 108 S. W. 705.

349. How Owners Must Pay.—After the completion of the unrendered list provided for in this chapter, the owner or owners must pay according to the value and assessment made thereon by the Comptroller. [R. S. Art. 7592.]

350. Owners May Appeal From Comptroller's Assessment.—Assessment of lands rendered to the Comptroller under the provisions of this chapter shall be made by the party rendering the same under oath as to their value; but if the Comptroller thinks the valuation too low he shall object, and, if the Comptroller and the party rendering the land can not agree, then the Comptroller shall assess the same at such value as he as a sworn officer may think it is worth; and, if the party rendering feels that the assessment is too high, he may appeal to the board of equalization, which for such purposes shall consist of the Governor, Attorney General and the Secretary of State, and their decision shall be final. [R. S. Art. 7593.]

351. Comptroller May Levy Upon and Sell, When.—Three months after the completion of the unrendered list of each unorganized county respectively, the Comptroller shall proceed to levy upon and advertise all lands in such counties upon which the taxes are due and unpaid, giving notice of the amount due upon each separate tract of land, and giving such description of the land upon which taxes are due and unpaid as he may be in possession of; such notice to be given by publication in some weekly newspaper published in the State for four consecutive weeks; said notice to state that on a certain day therein named the Comptroller will proceed to sell the land therein described, or so much thereof as may be necessary, to pay the State and county taxes due, and the cost of advertising the same. [R. S. Art. 7594.]

Acts 1895, c. 42 (amended in 1897 and embodied in Chapter 15 of this Title), providing for the collection of taxes, did not repeal this Article and Arts. 7595, 7596, originally enacted in 1879, since the Act of 1895 only

sought to regulate the collection of taxes such as had been and were thereafter to be assessed and collected by local officers, who, before the passage of that Act, were not empowered to collect any of the taxes, provision for the collection of which was made by Arts. 7587-7604, also dating from 1879. *Wolfrath v. De Lay* (Civ. App.), 142 S. W. 617.

Under this Article the notice need not be addressed to the owner or to the unknown owner or to the non-resident owner or owners. *Wolfrath v. De Lay* (Civ. App.), 142 S. W. 617.

Under this Article the fact that a notice published contained a description of some 500 sections of land arranged in columns and printed in 26-point type did not render the notice void. *Id.*

Though under this and the following articles the comptroller is only authorized to levy on and sell those lands owned by non-residents at the time of the assessment, and this article does not in terms of substance provide to whom the notice of sale shall be addressed, nor its form, a notice addressed to "all parties interested," and which contains all other necessary requisites, is sufficient. *Id.*

A notice of sale of delinquent tax lands in unorganized counties by the comptroller was not void because it contained a description of some 500 sections arranged in columns and was printed in 26-point type. *Id.*

Description of lands in a notice of sale for taxes, as belonging to "C. & M. R. R. Co.," held sufficient, in the absence of other lands in the county to which the abbreviation might apply. *Id.*

That the records in the office of the commissioner of the general land office showed that a patent had been issued to K. in 1880 did not require him to take notice that the land was owned by K. or his heirs, in describing the same in a notice of sale for delinquent taxes. *Id.*

352. Sale of Lands by Comptroller.—The sale shall commence on the day named in said notice, and may continue from day to day (Sundays and legal holidays excepted) until completed; such sale shall be had in front of the Comptroller's office, in the city of Austin, between the hours of eight o'clock a. m. and four o'clock p. m. of each day. [R. S. Art. 7595.]

The provisions of this Article must be complied with before the comptroller can make a valid sale. *Keenan v. Slaughter*, 49 C. A. 180, 108 S. W. 705.

See notes under Sec. 351.

353. Lands May Be Bought by State, When.—Should there be no purchaser of said lands, then the Comptroller shall bid the same in to the State for the taxes due thereon and the costs of sale, and make a deed to the State to the same, including in one deed all lands bid in for the State or any one else. [R. S. Art. 7596.]

See notes under Sec. 351.

354. Redemption of Lands Sold by Comptroller.—Should the lands bid in by the Comptroller for the State not be redeemed by the owner thereof or his agent within two years, by the party redeeming the same paying double the amount for which the said land was sold, then the said lands thus sold and unredeemed shall become vacant and revert to and become a part of the public free school fund, to be sold and disposed of as other lands belonging to the public free school fund are to be sold and disposed of by law. [R. S. Art. 7597.]

355. Tax Deed Made by Comptroller.—The Comptroller shall give to the purchaser of any lands, the sale of which is provided for in this chapter, a deed to the same, giving in such deed such description of the land as may be necessary to identify the same, or such description as he may be in possession of. [R. S. Art. 7598.]

356. List of Purchasers to Be Kept in Office of Comptroller.—The Comptroller shall keep a list of the purchaser or purchasers of all such lands in his office, showing the name and postoffice of the purchaser or purchasers, together with the amount and description of the land sold and the amount for which it was sold, and the date of sale. [R. S. Art. 7599.]

357. Deed of Comptroller Shall Vest Good Title, When.—The deed given to the purchaser or purchasers by the Comptroller under the provisions of this chapter shall vest a good and sufficient fee simple title in the purchaser or purchasers, subject to be impeached only for actual fraud; provided, the former owner or owners thereof do not redeem the same within two years from the date of the deed, either by paying to the purchaser or purchasers double the amount for which said land was sold, or by making a tender of the same to him or his agent, or by depositing with the Comptroller before the expiration of the two years double the amount for which such land was sold, to be paid by the Comptroller, when called upon, to the purchaser or purchasers thereof. [R. S. Art. 7600.]

See *Holbeen v. De La Garza* (Civ. App.), 126 S. W. 42.

358. County Taxes to Be Paid, When.—All county taxes collected under the provisions of Article 5147 [7597] shall be paid into the county treasury of the organized county to which the unorganized county is attached for judicial purposes. [R. S. Art. 7601.]

359. Comptroller to Keep Taxes of Unorganized Counties Until When.—All county taxes, other than taxes to pay pro rata of indebtedness to parent county, due unorganized counties, collected by

the Comptroller, shall be kept by him to the credit of such unorganized county until the total sum to the credit of the county shall reach the sum of five thousand dollars. Then he shall, upon the demand of the treasurer of the former unorganized county, when the same shall have organized, pay said sum, or whatever amount is held to the credit of said county, over to said treasurer. And all county taxes collected by the Comptroller after the amount to the credit of such unorganized county shall reach the amount of five thousand dollars shall be paid into the county treasury of the organized county to which the unorganized county is attached for judicial purposes. [R. S. Art. 7602.]

360. Duty of Comptroller as to Money.—Where the amount to the credit of any unorganized county now exceeds five thousand dollars the Comptroller shall keep said sum to be paid to the treasurer of such unorganized county when the same shall organize; and all county taxes, other than taxes collected to pay pro rata of indebtedness to parent county, hereafter collected by the Comptroller in such counties, shall be paid into the county treasury of the organized county to which such county is attached for judicial purposes. [R. S. Art. 7603.]

361. Special Deposit to Be Made by Comptroller.—All money received by the Comptroller on deposit for the redemption of land sold and bought by individuals shall be by him deposited in the State treasury as a special deposit, subject to the order of the party to whom the conditional deed to such land was given. So also shall all county taxes collected by the Comptroller under the provisions of this law be deposited in the State treasury as a special fund, subject to the order of the Comptroller, to be paid to the county treasurers as provided in this chapter. [R. S. Art. 7604.]

CHAPTER XV.

METHOD OF COLLECTING TAXES—ELECTION AND QUALIFICATION OF THE COLLECTOR.

(From Chapter 13, Title 126, R. S.)

	SEC.		SEC.
Election of Tax Collector and Term of Office.....	362	Duty of Collector When Property About to Be Removed from County	387
Vacancy in Office of Collector, How Filled	363	Tax Lien Superior to Assignment, Attachment, Inheritance or Devise, Except	388
Sheriff to Be Collector in Certain Counties	364	Execution on Property in Other Counties Than That Where Tax is Due	389
Requisites of Bond and Oath of Tax Collector	365	Tax Collector Not Allowed Credit for Delinquents, When.....	390
Shall Give New Bond in Certain Instances	366	All Property Liable for Taxes....	391
Collector to Give Separate Bond for County Taxes.....	367	Sales of Property for Taxes, How Made	392
All Bonds to Be First Approved..	368	Duty of Collector if Property is Insufficient	393
Tax Collector May Appoint Deputies	369	Sales of Real Property, When Made	394
Assessment Rolls to Be a Warrant	370	Advertisements of Real Property for Sale, etc.	395
Shall Be Collector of All Taxes..	371	Prior to Sale, List of Lands to Be Posted, When	396
When the Collection of Taxes Shall Begin	372	Sales May Be Continued from Day to Day, When.....	397
Tax Collector Shall Keep Office at County Seat	373	Homesteads Are Liable Only For Their Own Taxes	398
Tax Receipt and Its Requisites..	374	Sales of Land for Delinquent Taxes, How Made	399
Tax Receipts May Be Recorded in Clerk's Office	375	The Tax Deed of the Collector and Its Requisites	400
Duty of County Clerk to File and Record Tax Receipts, When.....	376	Sales by the Collector to Be Reported to Commissioners' Court	401
Fee of 25 cents for Recording and Filing	377	Redemption of Land Sold for Taxes by the Collector.....	402
Commissioners' Court to Furnish Record	378	Redemption Within Two Years, When	403
Quarterly Reports; Requisites of; Duty of Collector.....	379	Redemption from Private Purchaser, How Made	404
Duties of County Clerk and Collector of Taxes	380	Receipt of Collector, Notice, When	405
Report of Tax Collector Not to Be Approved Unless.....	381	Relief for Owners of Property, When	406
List of Delinquents and Insolvents to Be Made Out by Collector	382	Method of Cancelling Taxes Where Mistake in Rendering Same	407
Duty of Collector to Endeavor to Collect Delinquent List.....	383	Duty of Collector to Issue Certificate of Redemption from Collector, When	408
Non-residents May Pay Taxes to Comptroller, When	384		
Forced Collections to Begin, When	385		
Personal Property May Be Pointed Out to Collector.....	386		

	Sec.		Sec.
Duty of Collector to Bid in Lands for State, When.....	409	Compensation of Tax Collector for One Levy Only, etc.....	417
Owner or His Agent May Redeem, How	410	Taxes Upon Lands of Non-residents in Unorganized Counties to Be Paid to Comptroller.....	418
Shall Be Sold if Owner Fails to Redeem	411	To Account for Payment of Moneys	419
Owners May Redeem by Paying Costs, etc.	412	How Money Collected Shall Be Accounted for	420
Commissioners' Court to Sit as a Board of Inquiry in Cases of Double Payment	413	How Notification to Pay May Be Made	421
Duty of Tax Collector to File Complaint, When	414	Duty of District and County Attorneys to Sue for Taxes on Personal Property	422
Compensations and Commissions of Tax Collectors.....	415	Limitation Not Available to Delinquent Taxpayers	423
Compensation of Tax Collector on Occupation Tax	416		

362. Election of Tax Collector and Term of His Office.—In each county having ten thousand inhabitants, to be determined by the last preceding census of the United States, there shall be elected by the qualified voters, at the same time and under the same law regulating the election of State and county officers, a collector of taxes, who shall hold his office for two years and until his successor is elected and qualified. [R. S. Art. 7605, Const. Art. 8, Sec. 12.]

See notes under Section 16.

The bond of a tax collector with the approval thereof required by law is the best evidence of the time when the officer qualified as such. *Webb County v. Gonzales*, 69 Tex. 455, 6 S. W. 781.

It was error to admit tax rolls to show that certain property was assessed to defendant, unless it was first shown that the original assessment could not be produced. *First Nat. Bank v. Bruce* (Civ. App.), 55 S. W. 126.

Official character of a public officer need not be proven by his commission, or through written evidence, unless on an issue directly between the officer and the State. *De Lucenay v. State* (Civ. App.), 68 S. W. 796.

363. Vacancy in Office of Collector, How Filled.—Should the office of collector of taxes from any cause become vacant before the expiration of said term, it shall be the duty of the commissioners' court in the county in which such vacancy shall occur, to appoint a collector of taxes, who shall be qualified in the same manner and subject to like bonds as the collector of taxes elected; and the collector of taxes so appointed shall hold his office for and during the unexpired term of his predecessor and until his successor shall have been qualified; and the collector of taxes so appointed shall have all the rights and perform all the duties required by law of the collector of taxes elected. [R. S. Art. 7606.]

364. Sheriff to Be Collector in Certain Counties.—In each county having less than ten thousand inhabitants, the sheriff of such county shall be the collector of taxes, and shall have and exercise all the

rights, powers and privileges, be subject to all the requirements and restrictions, and perform all the duties imposed by law upon collectors; and he shall also give the same bonds required of a collector of taxes elected. [Const., Art. 8, Sec. 16; R. S. Art. 7607.]

In determining whether a sheriff elected in 1880 was, under Section 16, Article 8, of the Constitution of 1876, also *ex officio* collector of taxes by reason of his county containing less than ten thousand inhabitants, "under the last preceding census of the United States," the list of the enumerator taking the tenth census for the county, if duly certified as such, and filed in the office of the county clerk, prior to his election will govern. *Nelson v. Edwards*, 55 Tex. 389.

In determining whether a sheriff is also *ex-officio* collector of taxes, the list of the enumerator taking the last census will govern, if it is duly certified as such and filed in the office of the county clerk. *Nelson v. Edwards*, 55 Tex. 389.

In a suit by a county against a sheriff as *ex-officio* collector of taxes to recover taxes collected by him and not paid over, reports of taxes collected, endorsed by his deputy in his name as sheriff and collector, are admissible though not sworn to. *Webb County v. Gonzales*, 69 Tex. 455, 6 S. W. 781.

In a suit against a tax collector, a county ledger is not admissible in evidence against him. *Webb County v. Gonzales*, 69 Tex. 455, 6 S. W. 781.

365. Requisites of Bond and Oath of Tax Collector.—Every collector of taxes, within twenty days after he shall have received notice of his election or appointment, and before entering upon the duties of his office, shall give bond based upon unincumbered real estate of the sureties, subject to execution, payable to the Governor and his successors in office, in a sum which shall be equal to forty (40) per cent of the whole amount of the State tax of the county as shown by the last preceding assessment, providing said bond shall not exceed one hundred thousand (\$100,000.00) dollars, with at least three good and sufficient sureties, to be approved by the commissioners' court of his county, which shall be further subject to the approval of the Comptroller, and shall take and subscribe the oath prescribed by the Constitution, which, together with said bonds, shall be recorded in the office of the clerk of the county court of said county, and be forwarded by the county judge of the county to the Comptroller, to be deposited in his office. Said bond shall be conditioned for the faithful performance of the duties of his office as collector of taxes for and during the full term for which he was elected or appointed, and shall not become void upon first recovery, but suit may be maintained thereon until the whole amount thereof be recovered. [R. S. Art. 7608, Acts 1917, p. 353.]

The offenses of tax collectors, having in their possession money belonging to the State, denounced in Arts. 96, 97, Penal Code, by Article 144 and

Article 107, are separate and distinct and neither repeals or is in conflict with the other. *Quillin v. State* (Tex. Cr. App.), 187 S. W. 199.

A tax collector must give bond for faithful performance of his duties for collection of State taxes and another like bond for collection of county taxes. *T. L. & C. Co. v. Hemphill County* (Civ. App.), 61 S. W. 335.

A tax collector for whom plaintiffs were sureties on his bond to the State, was not their agent so as to bar an action by plaintiffs for his wrong. *Boaz v. Ferrell* (Civ. App.), 152 S. W. 200.

Upon an actual approval of a tax collector's bond by the comptroller it is not necessary to its validity that the approval should be indorsed upon it. *Oglesby v. State*, 73 Tex. 658, 11 S. W. 873.

As to liability of collector and sureties for failure to collect taxes on county bonds, see Art. 694.

A tax collector does not occupy toward the State the relation of a mere bailee for hire, who is responsible for only so much care of the public money as a prudent man would take of his own; he is bound to account for and pay over the public money that he collects, less his commission, or his securities must pay it for him. *Boggs v. State*, 46 Tex. 10.

Neither the sheriff, as tax collector, nor his securities can set up the fact that no legal levy of taxes was made in an action against them for not paying over, when it is shown that the taxes were collected by the officer and were not paid over. *Webb County v. Gonzales*, 69 Tex. 455; 6 S. W. 781, following *Morris v. State*, 47 Tex. 583, and other cases cited.

In a suit against a defaulting tax collector, in the absence of evidence showing when his collections were made, or that he was in default before the end of the fiscal year, interest, under the provisions of this chapter, should be required of him on the amount for which he was in default, only, from the end of the fiscal year for which the collections were made. *Cordray v. State*, 55 Tex. 140.

Where a tax collector issued receipts to his creditors for taxes which he did not collect, the sureties on his bond were liable therefor. *Ward v. Marion County*, 26 C. A. 361, 62 S. W. 557, 63 S. W. 155.

Sureties of a defaulting tax collector held not entitled to claim the judgment recovered by the State against a taxpayer as a judgment recovered for their own use. *Texas & N. O. R. Co. v. State*, 43 C. A. 580, 97 S. W. 142.

Liability for money received by a sheriff as such is not covered by his bond as ex officio tax collector. *American Bonding & Trust Co. v. Garrett* (Civ. App.), 129 S. W. 398.

A payment upon a draft upon the collector on account of the school funds is subjected to the same rules as to the use of State funds, and the effect of using them in such payments, as is made directly to the treasury. That the comptroller was ignorant of the source from which funds have been received, which have been by him, without instruction from the collector, applied to his indebtedness for taxes for former years, does not deprive the sureties on the collector's bond, at the time such taxes were collected, of the benefit of the payment of such funds into the treasury by their principal. *State v. Middleton*, 57 Tex. 185.

Taxes collected and paid into the treasury cannot lawfully be applied to the discharge of a pre-existing debt of the tax collector on a former account. The collector cannot authorize, nor can the comptroller apply it to the injury of the sureties of the collector. *Id.*

A tax collector cannot assign uncollected taxes by the delivery of tax

receipts to a surety on his bond in order to indemnify him for money advanced to pay a deficit in the collector's account. *Arbuckle v. State*, 81 Tex. 191, 16 S. W. 876.

Where collected tax money belonging to the State and to a county was commingled by the collector, and in part embezzled, and the balance paid to the county, the sureties on the collector's bond to the State, after payment to the State under the terms of the bond, were subrogated to the State's rights, as against the county and the sureties on the collector's county bond. *Boaz v. Ferrell* (Civ. App.), 152 S. W. 200.

Upon an actual approval of a tax collector's bond by the comptroller, it is not necessary to its validity that the approval be endorsed upon it. *Oglesby v. State*, 73 Tex. 658, 11 S. W. 873.

A bond which contains a provision that the collector shall perform his duties as such generally may be enforced against him under a law afterwards enacted. *Swan v. State*, 48 Tex. 120.

As to the liability of a tax collector and his sureties for failure to collect taxes on county bonds, etc., see Article 900 of the Revised Statutes of 1895.

Taxes collected and paid into the treasury cannot lawfully be applied to the discharge of a pre-existing debt of the tax collector on a former account. The tax collector cannot authorize nor can the comptroller apply it to the injury of the sureties of the collector. *State v. Middleton*, 57 Tex. 185.

The liability of sureties on a tax collector's bond which by its terms binds the collector and sureties jointly and severally, is not limited by writing opposite the signature of each surety a specific amount and causing the certificate of acknowledgement to recite that they had each rendered himself liable for such specific amount. *Cordray v. State*, 55 Tex. 140.

The relation of a tax collector toward the State is not that of a mere bailee for hire. He is bound to account for and pay over the taxes collected, or his sureties must pay for him. *Boggs v. State*, 46 Tex. 10.

The tax collector must give bond for faithful performance of his duties for the collection of State taxes, and another like bond for collection of county taxes. *T. L. & C. Co. v. Hemphill County*, 61 S. W. 335.

The bond of a tax collector can not be approved when any surety on same is not a resident of the county in which the tax collector has been elected. Penal Code, Article 271.

As to how sureties on an official bond may be relieved from liability thereon, see Article 356 et seq. of the Revised Statutes of 1895. The release of one surety will release all other sureties; so, where one surety is released, a new bond must be required. Opinion of Attorney General.

366. Shall Give New Bond in Certain Instances.—The collector of taxes may be required to furnish a new bond or additional security whenever, in the opinion of the commissioners' court or Comptroller of Public Accounts, it may be advisable. Should any collector of taxes fail to give a new bond and additional security, when required, he shall be suspended from office by the commissioners' court of his county, and immediately thereafter be removed from office in the mode prescribed by law. [R. S. Art. 7609.]

An officer required to give a new bond is entitled to a reasonable time therefor. *Poe v. State*, 72 Tex. 625, 10 S. W. 737.

Sureties on a collector's bond are not released from liability until the new bond is approved by the comptroller, notwithstanding its approval by the commissioners' court. *State v. Wells*, 61 Tex. 562; *Finch v. State*, 71 Tex. 52, 9 S. W. 85.

If the necessity arises, additional security may be required, and the collector cannot further discharge his official duties until further security is furnished. *Orange County v. T. & N. O. Ry. Co.*, 35 C. A. 361, 80 S. W. 671.

367. Collector to Give Separate Bond for County Taxes.—Collectors of taxes shall give a like bond, with like conditions, to the county judge of their respective counties and their successors in office in a sum not less than forty (40) per cent of the whole amount of the county tax, as shown by the last preceding assessment, providing said whole amount shall not exceed one hundred thousand (\$100,000.00) dollars, with at least three good and sufficient sureties, to be approved by the commissioners' court of his county, which bond shall be recorded and deposited in the office of the clerk of the county court. A new bond and additional security may be required, and, for a failure to give such new bond or additional security, the collector of taxes may be removed from office in the manner prescribed by law. In the event the bonds required under the terms of this article and also under Article 7608 or either thereof, and executed by a satisfactory surety company or companies or by any private party or parties as surety or sureties thereon in counties with a total taxable valuation of thirty million (\$30,000,000) dollars or more, the county of which the principal in said bonds is tax collector shall pay a reasonable amount as premium on said bond or bonds which amount shall be paid out of the general revenue of the county upon presentation of the bill therefor to the commissioners' court of the county properly authenticated as required by law in other claims against the county, and should there be any controversy as to the reasonableness of the amount claimed, as such premium, such controversy may be determined by any court of competent jurisdiction.

Section 2. Provided further that as soon as this Act shall take effect, or at any time thereafter, tax collectors shall be allowed to make new bonds under the provisions hereof, such bonds to be in lieu of the bonds given by them under the law existing at the time such bonds were given.

Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed.

Sec. 3a. Provided that except as to compensation due such tax collector as shown by his approved reports, tax money deposited in

county depositories shall be paid by such depositories only to treasurers entitled to receive the same, on checks drawn by such tax collector, in favor of such treasurer. [R. S. Art. 7610, amended by Acts 1917, p. 354.]

A tax collector's bond, in so far as it relates to county taxes, should be made payable to the county judge. *King v. Ireland*, 68 Tex. 682, 5 S. W. 499.

A county tax collector has no authority to receive taxes before the assessment rolls have been delivered to him, though they have been approved, and having done so, and failed to turn the taxes over to the county, the taxpayer is still liable therefor. The public must take notice of the authority under which public officers act. *Orange County v. T. & N. O. Ry. Co.*, 80 S. W. 670.

If the necessity arises, additional security may be required, and the tax collector can not further discharge his official duties until further security is furnished. *Orange County v. T. & N. O. Ry. Co.*, 80 S. W. 670.

368. All Bonds to Be first Approved.—No collector of taxes shall enter upon the discharge of the duties of the office until all the bonds required of him by law for the collection of any taxes, State, county or special, shall have been given and approved. [R. S. Art. 7611.]

369. Tax Collector May Appoint Deputies.—Each collector of taxes may appoint one or more deputies to assist him in the collection of taxes, and may take such bond and security from the person so appointed as he deems necessary for his indemnity; and the collectors, in all cases, shall be liable and accountable for his proceedings and misconduct in office. [R. S. Art. 7612.]

Evidence, in an action by a tax collector for the recovery of money alleged to have been misappropriated by a deputy, held to warrant a finding that a certain amount sought to be recovered was received during the deputy's absence. *Hutton v. Graham* (Civ. App.), 140 S. W. 1185.

Evidence held to sustain a judgment for defendant. *Id*

370. Assessment Rolls to Be a Warrant.—When the collector of taxes of any county shall have received the assessment rolls or books of the county, he shall receipt to the commissioners' court for the same; and said rolls or books shall be full and sufficient authority for the county collector of taxes to receive and collect the taxes therein levied. [R. S. Art. 7613.]

After the collection, the collector is required under penalties to promptly report and remit all taxes collected by him to the State and county treasurers, without excepting cases in which suits, however promptly filed, may be instituted for the recovery thereof. *T. L. & C. Co. v. Hemphill*, 61 S. W. 334.

371. Shall Be Collector for All Taxes.—The collector of taxes shall be the receiver and collector of all taxes assessed upon the tax

list in his county, whether assessed for the State or county, school poorhouse or other purpose; and he shall proceed to collect the same according to law, and place the same when collected to the proper fund, and pay the same over to the proper authorities, as hereinafter provided. [R. S. Art. 7614.]

See *Davis v. Riley* (Civ. App.), 154 S. W. 314.

A tax collector and his deputy collecting taxes in a district in which he has not authority to act is liable in actual damages as a trespasser. *Wright v. Jones*, 14 C. A. 423, 38 S. W. 249.

The duty of the tax collector to collect all taxes due the county and the State is one of the governmental ministerial functions which he alone can exercise. *Stringer v. Franklin County* (Civ. App.), 123 S. W. 1168.

Payment for taxes with a warrant calling for current money is equivalent to a payment with the money itself, and is good. *Ostrum v. City of San Antonio*, 30 C. A. 462, 71 S. W. 304.

The giving of credit to a tax collector held not to have amounted to payment of taxes. *Figures v. State* (Civ. App.), 99 S. W. 412.

A tax collector has no legal authority to agree with a taxpayer to substitute his responsibility for that of the taxpayer. *Graves v. Bullen*, 53 C. A. 261, 115 S. W. 1177.

A tax collector was not bound to accept a part of taxes due upon the owner's claim that the amount tendered was the whole amount due. *Lufkin Land & Lumber Co. v. Noble* (Civ. App.), 127 S. W. 1093.

372. When the Collection of Taxes Shall Begin.—The collector of taxes of each county shall begin the collection of taxes annually on the first day of October, or so soon thereafter as he may be able to obtain the proper assessment rolls, books or data upon which to proceed with the business; and he shall post up notices—not less than three—at public places in each voting or magistrate's precinct in his county, at least twenty days previous to the day said taxpayers are required to meet him for the purpose of paying their taxes, stating in said notice the time and places the same are required to be paid; and it shall be the duty of said collector, or his deputy, to attend at such times and places for the purposes aforesaid, and shall remain at each place at least two days; and, if the collector shall, from any cause, fail to meet the taxpayers at the time and place specified in the first notice, he shall, in like manner, give a second notice. [R. S. Art. 7615.]

A valid assessment is essential to the validity of a tax. *Sullivan v. Bitter*, 51 C. A. 604, 113 S. W. 193.

A taxpayer cannot pay his taxes to the tax collector of the county, so as to relieve him from liability to the county for his taxes, and from the tax lien, before the assessment rolls have been delivered to the collector, although the rolls had been duly made, and passed on and approved by the board of equalization, and although the collector had been duly elected,

had qualified and was acting as tax collector, when he received the taxes (which he did not pay over to the county). A county tax collector has no authority to receive taxes before the assessment rolls have been delivered to him. The public must take notice of the authority under which a public officer acts. *Orange County v. T. & N. O. Ry. Co.*, 35 C. A. 361, 80 S. W. 670.

It is contemplated by the law that taxes are due and payable on October 1st of that year. The fact that seizure of property for taxes cannot be made prior to January 1st indicates a mere indulgence of the taxpayer and not that the taxes are not sooner due and payable. *Wall v. Club & Cattle Co. (Civ. App.)*, 88 S. W. 536.

Payment of taxes to the county collector before the tax rolls are delivered to him and before he has any warrant to receive them held not a payment of the taxes as against the State. *Texas & N. O. R. Co. v. State*, 43 C. A. 580, 97 S. W. 142.

And a contract between an attorney general and the bondsmen of a defaulting tax collector held not defense to the State's action against the taxpayer to recover the tax. *Id.*

Place of payment. See notes under Article 7616.

A tax receipt is evidence of payment of taxes, and the fact that the person signing it acted as collector is *prima facie* evidence of his authority. *Dean v. Wills*, 21 Tex. 642.

Payment of taxes may be proven by other evidence than the tax receipt. It may be proven by parol. *McDonough v. Jefferson County*, 79 Tex. 535, 15 S. W. 490; *Jack v. Dillon*, 25 S. W. 645.

It is contemplated by law that taxes are due and payable on October 1st for that year. The fact that seizure of property for taxes can not be made prior to January 1st indicates a mere indulgence of the taxpayer, and not that the taxes are not sooner due and payable. *Wall v. Club Land & Cattle Co.*, 88 S. W. 536.

373. Tax Collector Shall Keep Office at County Seat.—The collector of taxes shall keep his office at the county seat of his county; and it shall be the duty of every person who has failed to attend and to pay his taxes at the times and places in his precinct named by the collector, as provided in the preceding article, to call at the office of the collector and pay the same before the last day of December of the same year for which the assessment is made. [R. S. Art. 7616.]

Under this article, Arts. 2943-2945, 2957, 7615, and Terrell's Election Law, Sec. 152 (Acts Twenty-ninth Legislature, First Called Session, c. 11), providing that all poll taxes shall be paid on or before the 1st day of February of each year, making it a penal offense for the collector to receive poll taxes and antedate the receipts therefor after such time, payment by a citizen of his poll tax at any other place than the office of the collector does not in the law constitute a payment of the tax, so as to entitle the taxpayer to a receipt on which he can vote, unless made to a deputy in a town of 10,000 inhabitants other than the county seat, and payment of poll taxes by citizens not residing in such a town, on January

30, 1912, to a private agent authorized to pay the same to the tax collector and receive the receipts, which did not reach the tax collector until the 1st and 2nd days of February, 1912, did not entitle the taxpayers to receipts dated as of January 31, 1912, so as to enable them to vote thereon. *Davis v. Riley* (Civ. App.), 154 S. W. 314.

Under Section 10, Chapter 103, Acts of the Twenty-fifth Legislature, post Article 5232j, the taxpayer is allowed to pay his taxes without penalty until the 31st day of January next succeeding the return of the assessment rolls of the county to the Comptroller.

374. Tax Receipt and Its Requisites.—The collector of taxes or his deputy, whenever any tax is paid, shall give to the person paying the same a receipt therefor, specifying the amount of State ad valorem tax, amount of State poll tax, the amount of county ad valorem tax, the amount of county poll tax, and the year or years for which such tax was levied; said receipt shall also show the number of acres of land in each separate tract, number, abstract and name of original grantee; the said receipt shall have a duplicate stub showing the name of the person, the date, the amount of each separate tax and the date of payment. The collector of taxes shall provide himself with a seal, on which shall be inscribed a star with five points, surrounded by the words, "Collector of taxes, _____ County" [the blank to be filled with the name of the county], and shall impress said seal to each receipt given by him for taxes collected on real estate; and said receipt having the seal attached shall be admissible to record in the county in which the property is situated in same manner as deeds duly authenticated, and when so recorded shall be full and complete notice to all persons of the payment of said tax. [R. S. Art. 7617.]

NOTE.—See Act of 1915, elsewhere, authorizing recording of tax receipts.

Evidence in trespass to try title, in which defendant's defense was limitations, based on the payment of taxes on the land, held not to show a payment. *Lofton v. Miller*, 55 C. A. 253, 118 S. W. 911.

Though tax receipts have been out and delivered to taxpayers, the county may still recover the taxes indicated in such receipts if not actually paid. *Graves v. Bullen*, 53 C. A. 261, 115 S. W. 1177.

375. Tax Receipts May Be Recorded in Clerk's Office.—Every receipt for the payment of taxes on property, real, personal or mixed, hereafter paid, as well as those heretofore paid, collected by State, county or municipal officers, may be recorded in the office of the county clerk of the county where the property is situated. [Chap. 85, Acts 1915, Sec. 1, p. 137.]

376. Duty of the County Clerk to File and Record Tax Receipts, When.—On presentation of a tax receipt to the county clerk it shall be his duty to immediately file the same in the same manner of filing

a deed to land; and he shall enter and record such receipt at length and in full in a record book or books kept by him for the purpose of recording tax receipts, which said records shall be called, "Tax Receipt Record," and shall have the name and number written or printed thereon, and such record shall be evidence to all the world of the payment of such tax, and certified copies thereof may be used in evidence on issues involving the same under like rules admitting certified copies of deeds in evidence. [Sec. 2, Acts 1915, p. 137.]

377. Fee of 25c for Recording and Filing.—A fee of twenty-five cents shall be paid to the clerk for filing, recording and certifying to each tax receipt, and when recorded such receipt shall be returned to the party filing the same or the owner. [Acts 1915, Sec. 3, p. 137.]

378. Commissioners' Court to Furnish Record.—The commissioners' court of each county shall provide and furnish to the county clerk of such county tax receipt record books which may be made in form as books for recording deeds or in form with printed blanks conforming to the form of the tax receipts as provided under authority of the State for tax collectors, or in any form suitable to the purposes of this Act, in the discretion of said commissioners' court, with the name "Tax Receipt Record" endorsed on the same, with successive numbers on each separate volume, and properly index said record alphabetically in the name of the holder of the tax receipt. [Sec. 4, Acts 1915, p. 137.]

379. Quarterly Reports; Requisites of; Duties of Collector.—
1. At the end of each month the collector of taxes shall, on forms to be furnished by the Comptroller of Public Accounts, make an itemized report under oath to the Comptroller, showing each and every item of ad valorem, poll and occupation taxes collected by him during said month, accompanied by a summarized statement showing full disposition of all State taxes collected. Provided, however, that said itemized reports for the months of December and January of each year may not be made for twenty-five (25) days after the end of such months if same can not be completed by the end of such respective months.

2. He shall present such report, together with the tax receipt stubs, to the county clerk, who shall, within two days, compare said report with said stubs, and if same agree in every particular as regards names, dates and amounts, he (the clerk) shall certify to its correctness, for which examination and certificate he shall be paid by the commissioners' court twenty-five cents for each certificate and twenty-five cents for each two hundred taxpayers on said report.

3. The collector of taxes shall then immediately forward his reports so certified to the Comptroller, and shall pay over to the State

Treasurer all moneys collected by him for the State during said month, excepting such amounts as he is allowed by law to pay in his county, reserving only his commissions on the total amount collected, and to enable him to do so, he may, at his own risk, send the same to the State Treasurer at the least cost to the State, on which he shall be allowed credit by the Comptroller upon filing receipts showing actual amount of exchange paid; provided, that the State Treasurer shall accept no payment other than money orders, or direct cash payments, which may be made through express companies, banks, or any other source. The State Treasurer, whenever he may receive a remittance from a collector of taxes, shall promptly pay the money so remitted to the State treasury, on the deposit warrant of the Comptroller, and the money, when so deposited, shall be a credit to the said collector of taxes.

4. The collector of taxes shall pay over to the State Treasurer all balances in his hands belonging to the State, and finally adjust and settle his account with the Comptroller on or before the first day of May of each year, and to enable him to do so, the commissioners' court shall convene on or before the third Monday in April for the purpose of examining and approving his final settlement papers.

5. The allowance of a delinquent and insolvent list to the collector, in accordance with Article 7621, shall not absolve any taxpayer or property thereon from the payment of taxes, but it shall be the duty of the collector to use all necessary diligence to collect the amounts due thereon, after it is allowed by the commissioners' court; and he shall issue special tax receipts therefor, to be furnished by the Comptroller, which blank receipts shall be numbered and charged to the collector, who shall account for same at his next annual settlement, in the same manner as occupation tax receipts. He shall also make itemized monthly reports of such collections, using special blanks for that purpose.

6. To enforce the prompt and speedy collection and remittance of taxes, and to provide for the proper accounting of same, the Comptroller shall prescribe and furnish the forms to be used by collectors of taxes, and the mode and manner of keeping and stating their accounts, and shall adopt such regulations as he may deem necessary in regard thereto. It shall be his imperative duty to enforce a strict observance of all the provisions of these articles. [R. S. Art. 7618, Acts 1915, p. 190.]

Where claims against the State are based alone on the requisition of an individual, i. e., any person or board authorized by law to make the same—the comptroller is not authorized to draw his warrant on the treasury, unless the claim is made pursuant to some specific appropriation; the

comptroller not being clothed, however, with absolute or arbitrary power to withhold his warrant, his duty to issue it being mandatory, if an appropriation for the purpose in question has been made and the requisition follows the appropriation. *Fullmore v. Lane*, 104 Tex. 499, 140 S. W. 405, 1082.

Usurpation by the State Comptroller of powers given another department to review certain accounts, though long continued, cannot give him the right to exercise that power. *Rochelle v. Lane*, 105 Tex. 350, 148 S. W. 558.

The Comptroller and his chief clerk are responsible to the State where a deficit of State funds occur in their department. *Brown v. Sneed*, 77 Tex. 471, 14 S. W. 248.

The commissioners' court has no power to compel the tax collector to pay over the State tax money to the county treasurer, but this must be paid into the State depository or to the State Treasurer under the provisions of Article 7618, Revised Statutes, and Article 109, Penal Code.

The statutes require the tax collector to make a monthly report and payment of both State and county tax money, and no authority is given to the commissioners' court to require a daily settlement. Ruling of Attorney General, p. 621, 1912-14.

380. Duties of County Clerk and Collector of Taxes.—The collector of taxes shall at the end of each month make like reports to the commissioners' court of all the collections made for the county, conforming as far as applicable and in like manner to the requirements as to the collection and report of taxes collected for the State. The county clerk shall likewise, within two days after the presentation of said report by the collector, examine said report and stubs, and certify to their correctness as regards names, dates and amounts; for which examination and certificate he shall be paid by the collector of taxes fifty cents each month, which amount shall be allowed to the collector by the commissioners' court.

2. The clerk shall file said report intended for the commissioners' court, together with the tax receipt stubs, in his office for the next regular meeting of the commissioners' court.

3. The collector of taxes shall immediately pay over to the county treasurer all taxes collected for the county during said month, after reserving his commissions for collecting the same, and take receipts therefor, and file with the county clerk.

4. At the next regular meeting of the commissioners' court, the collector of taxes shall appear before said court and make a summarized statement, showing the disposition of all moneys, both of the State and county, collected by him during the previous three months. Said statement must show that all taxes due the State have been promptly remitted to the State treasury at the end of each month, and all taxes due the county have been paid over

promptly to the county treasurer, and shall file proper vouchers and receipts showing same.

5. The commissioners' court shall examine such statement and vouchers, together with the itemized report and tax receipt stubs filed each month, and shall compare the same with the tax rolls and tax receipt stubs. If found correct in every particular, and if the collector of taxes has properly accounted for all taxes collected, as provided above, the commissioners' court shall enter an order approving said report, and the order approving same shall be recorded in the minutes, as other proceedings of said court.

6. The collector of taxes shall finally adjust and settle his account with the commissioners' court for the county taxes collected, at the same time and in the same manner as is provided in the foregoing article in his settlement with the State. [R. S. Art. 7619.]

The fact that the rolls were marked "paid" opposite the names of persons to whom receipts were issued (when they had not paid) did not put the commissioners' court on notice that more money had been collected than reported. The withholding by the tax collector from his reports of stubs of receipts issued when no payment had been made was such concealment as suspended the running of the statute of limitation. *Ward v. Marion County*, 63 S. W. 155.

When the tax collector gave receipts, but did not collect the money, limitation ran against right of action against surety on his bond since the commissioners' court would have discovered the wrong had they compared the collector's report with the tax roll and receipt stubs as they are required by law to do. *Ward v. Marion County*, 62 S. W. 557.

381. Report of Tax Collector Not to Be Approved, Unless.—If any collector of taxes shall have failed at the end of each month, or within three days thereof, to promptly remit to the State Treasurer the amount due by him to the State, or pay over to the county treasurer the amount due by him to the county, the commissioners' court, at the next regular meeting, shall ascertain the facts; and, if the collector of taxes fails or refuses to pay or remit the same and file proper vouchers therefor, as provided in the foregoing article, the commissioners' court shall not approve his reports and accounts, but shall ascertain the amounts due by him, both to the State and county, and enter an order requiring him to pay the same to the proper treasurers, as is provided in Articles 7658 and 7659 of the Revised Statutes, and notify such collector, as is provided for in Article..... [Article 7660], under penalty for failure to do so, in Section 4 of said article [as provided for in the Penal Code.] Whenever the collector of taxes shall fail or refuse to remit to the State Treasurer the amounts due the State, when requested, the Comptroller shall notify him under Articles 7658, 7659, 7660,

and 7661, and for such failure be subject to the penalties provided in the Penal Code. [R. S. Art. 7620.]

Article 4769a, referred to in the Acts of 1893, is the Act of July 2, 1879, and so numbered in Sayles' Texas Civil Statutes, to which evidently reference was had. The first three sections are Articles 5210, 5211 and 5212 of this revision, and Sections 4, 5, 6 and 7 are the supplemental sections of Article 104 of the Penal Code. (Codifiers of 1895.)

382. List of Delinquents and Insolvents to Be Made Out by Collector.—The collector of taxes shall make out on forms, to be furnished for that purpose by the Comptroller of Public Accounts, between April 1 and 15 of each year, lists of delinquent or insolvent taxpayers, the caption of which shall be, the "list of delinquent or insolvent taxpayers." In this list he shall give the name of the person, firm, company, or corporation from whom the taxes are due, in separate columns; and he shall post one copy of these delinquent or insolvent lists at the court house door of the county, and one list at the court house door, or where court is usually held, in each justice precinct in his county; and the collector of taxes, upon the certificate of the commissioners' court that the persons appearing on the insolvent or delinquent lists have no property out of which to make the taxes assessed against them, or that they have moved out of the county, and that no property can be found in the county belonging to such persons, out of which to make the taxes due, shall be entitled to a credit on final settlement of his accounts for the amounts due by the persons, firms, companies, or corporations certified to by the commissioners' court, as above provided for. [R. S. Art. 7621.]

No tax collector shall be allowed credit for lists of delinquent or insolvent taxpayers, as provided in this article, until he makes oath in writing that he has exhausted all resources to collect said delinquent taxes under the provisions of Chapter 129, Acts of the Twenty-ninth Legislature, and other laws therein referred to. Acts of 1905, page 317; post chapter 4a.

383. Duty of Collector to Endeavor to Collect Delinquent List.—The allowance of an insolvent list to the collector in accordance with the provisions of the preceding article shall not absolve any taxpayer or property thereon from the payment of taxes; but it shall be the duty of the collector to use all necessary diligence to collect the amounts due on the insolvent list after it is allowed, and report and pay over to the proper officers all amounts collected on the same. [R. S. Art. 7622.]

384. Non-Residents May Pay Taxes to Comptroller, When.—Non-residents of counties, owing State or county taxes, are hereby authorized to pay the same to the Comptroller of Public Accounts;

provided, that all taxes due by said non-residents shall be paid at the Comptroller's office on or before the first day of January next after the assessment of such taxes; provided, further, that the collectors of taxes shall be entitled to the commissions on all moneys paid by non-residents to the Comptroller of Public Accounts, due their counties respectively. [R. S. Art. 7623.]

Non-residents can pay taxes to the Comptroller, and a levy cannot be made before expiration of the time within which Comptroller can send his list of delinquent taxes to county collector. *Allen v. Courtney*, 24 C. A. 86, 58 S. W. 200, 201.

385. Forced Collections to Begin, When.—If any person shall fail or refuse to pay the taxes imposed upon him or his property by law, until the first day of January next succeeding the return of the assessment roll of the county to the Comptroller, the collector of taxes shall, by virtue of his tax roll, seize and levy upon and sell so much personal property belonging to such person as may be sufficient to pay his taxes, together with all costs accruing thereon; provided, there shall be no levy on property when the owner thereof has the right to pay at the Comptroller's office, until a list of the persons who have paid their taxes at said office has been furnished the collector of taxes by the Comptroller. The Comptroller shall forward said list of paid taxes on or before the first day of February of each year; and the tax collector shall, immediately on receipt of said list from the Comptroller, levy on and sell the property of such non-residents as have not paid their taxes, in accordance with the law regulating the sale of property for taxes. [R. S. Art. 7624.]

Injunction will lie to restrain the illegal seizure or use of books and papers pertaining to any public office, the illegal expenditure of county funds or the illegal issue and delivery of county bonds. *Caruthers v. Harnett*, 67 Tex. 127, 2 S. W. 523.

Sureties on a city treasurer's bond may by injunction protect themselves against a misappropriation of the city funds in the hands of such treasurer. *City of Bonham v. Taylor*, 81 Tex. 59, 16 S. W. 555.

To authorize an injunction restraining the council of a city organized under the general laws of the State in the exercise of the powers conferred by statute, the complainant must show himself injured by the impairment or deprivation of some vested right. *Wooters v. City of Crockett*, 11 C. A. 474, 33 S. W. 391. See *Conner v. City of Paris*, 27 S. W. 88, 87 Tex. 32.

A city should not be enjoined from interfering with a lot when it has only attempted to remove fences from the adjoining street. *City of San Antonio v. Campbell* (Civ. App.), 56 S. W. 97.

Courts held to have no power to enjoin the officers of a State, unless they are about to take some act under an unconstitutional law, which constitutes an unlawful interference with the rights of complainant. Mis-

souri, K. & T. Ry. Co. of Texas v. Shannon, 100 Tex. 379, 100 S. W. 138, 10 L. R. A. (N. S.) 681

Where a tax levied by a school district was illegal because excessive, bonds proposed to be issued upon such illegal levy will be enjoined. *Snyder v. Baird Independent School Dist.*, 102 Tex. 4, 113 S. W. 521.

A railway company may restrain the enforcement of an unreasonable order of the railroad commission, requiring the company to erect and maintain a depot at a place designated. *Railroad Commission of Texas v. Chicago, R. I. & G. Ry. Co.* (Civ. App.), 114 S. W. 192.

Courts will not enjoin adoption of an ordinance within the legislative discretion of the governing body of a municipal corporation. *Hatcher v. City of Dallas* (Civ. App.), 133 S. W. 914.

A court of equity cannot enjoin peace officers from enforcing a valid criminal statute. *Id.*

Where a railroad has not for five or six years used a portion of its track, which the erection of a sea wall by a city renders it impracticable to rebuild, a temporary injunction against interference by the city with the construction of a track on a new location, which would accomplish the whole purpose of the suit without a trial upon the merits, is properly refused. *Galveston & W. R. Co. v. City of Galveston* (Civ. App.), 137 S. W. 724.

In mandamus to compel the county commissioners' court to take certain sections of land out of the E. school district, where they had been fraudulently placed by the commissioners' in dividing the county into common school districts, and permit them to be annexed to the C. independent district, the petition alleged that E. school district bonds were about to be issued, and would be signed by the county judge and treasurer on a certain day, and that, upon the issuance and sale of the bonds, they would become liens on the E. school district, including the sections sought to be withdrawn for 30 years, and prayed that the county judge and treasurer be restrained from signing the proposed bonds, and that the commissioners' court be restrained from buying them with county funds until they have been approved by the attorney general. Under this article and Const. Art. 5, par. 8, as amended in 1891, giving a district court general supervisory control over the commissioners' courts, and general original jurisdiction over all causes of action whatever for which a remedy is not provided, a temporary injunction was properly granted as prayed. *McLaughlin v. Smith* (Civ. App.), 140 S. W. 248.

Where the validity of evidences of indebtedness issued by the court of county commissioners to pay for the construction of a court house was doubtful, it being questionable whether they were bonds under Acts 1889. c. 149, the issuance of such indebtedness will not be enjoined at the suit of taxpayers. *Commissioners' court of Floyd County v. Nichols* (Civ. App.), 142 S. W. 37.

The question of building a court house rests in the discretion of the county commissioners, and hence, though the majority of the taxpaying voters are opposed, they are not entitled to an injunction to prevent the building of a court house according to plans selected by the court. *Id.*

Under Section 10, Chapter 103, Acts of the Twenty-fifth Legislature, post Article 5232p, forced collections are not to begin until the 31st day of January next succeeding the return of the assessment rolls of the county to the comptroller.

Non-residents can pay their taxes to comptroller, and a levy can not be

made before the expiration of the time within which the comptroller can send the collector a list of the persons who have paid their taxes to him. *Allen v. Courtney*, 58 S. W. 200.

Personal property in the hands of an assignee for creditors is subject to seizure and sale for taxes due on realty. *Wynne v. Hardware Co.*, 67 Tex. 40, 1 S. W. 568.

A tax collector and his deputy collecting taxes by levy and sale in a district in which they have no authority to act, are liable in actual damages as trespassers. *Wright v. Jones*, 38 S. W. 249.

Tax collector not authorized to levy on and sell personal property for taxes due on an assessment of land in name of "unknown owner." Opinion of Attorney General.

To constitute levy on personal property for taxes, the property must be reduced to actual possession by the collector; and when the delinquent volunteers payment before such reduction to possession, the collector is only entitled to costs accrued up to date of payment. Opinion of Attorney General.

386. Personal Property May Be Pointed Out to Collector.—If any person shall point out to the collector of taxes sufficient personal property belonging to him to pay all taxes assessed against him before the first day of January of any year, the collector shall immediately levy upon and sell such property so pointed out, in accordance with the laws regulating tax sales of a similar class of property. [R. S. Art. 7625.]

387. Duty of Collector When Property About to Be Removed From County.—If it comes to the knowledge of the collector that any personal property assessed for taxes on the rolls is about to be removed from the county, and the owner of such property has not other property in the county sufficient to satisfy all assessments against him, the collector shall immediately levy upon a sufficiency of such property to satisfy such taxes and all costs, and the same sell in accordance with the law regulating sales of personal property for taxes, unless the owner of such property shall give bond, with sufficient security, payable and to be approved by the collector, and conditioned for the payment of the taxes due on such property, on or before the first day of January next succeeding. [R. S. Art. 7626.]

388. Tax Lien Superior to Assignment, Attachment, Inheritance or Devise, Except.—In all cases where a taxpayer makes an assignment of his property for the payment of his debts, or where his property is levied upon by creditors, by writs of attachment or otherwise, or where the estate of a decedent is or becomes insolvent, and the taxes assessed against such person or party, or against any of his estate remains unpaid in part or in whole, the amount of such unpaid taxes shall be a first lien upon all such property; provided, that, when taxes are due by an estate of a de-

ceased person, the lien herein provided for shall be subject to the allowances to widows and minors, funeral expenses, and expenses of last sickness; and such unpaid taxes shall be paid by the assignee when said property has been assigned by the sheriff out of the proceeds of sale in case such property has been seized under attachment or other writ, and by the administrator or other legal representative of decedents; and, if said taxes shall not be paid, all said property may be levied on by the tax collector and sold for such taxes in whomsoever's hands it may be found. [Report joint committee, 1895, No. 111, Sen. Jour., p. 486; R. S. Art. 7627.]

This article does not apply to a tax in favor of a municipal corporation incorporated under the general laws of this State. It creates a lien upon personal property when the conditions named in it exist. Such a lien does not exist independent of this article. *People's Nat. Bank v. City of Ennis* (Civ. App.), 50 S. W. 632.

This article does not amount to exemption, for it does not undertake to repeal any other legislation on the subject. Its purpose is to aid in collection of taxes, and is not for the benefit of individuals. *State v. Jordan*, 25 C. A. 17, 59 S. W. 826, 60 S. W. 1009.

This article has no bearing on the question as to the superiority of the landlord's lien, under Art. 5477, over the claim of the children of a deceased tenant for an allowance in lieu of exemptions, under Art. 3414. *Champion v. Shumate*, 90 Tex. 597, 34 S. W. 128, 40 S. W. 394.

The court has authority to order taxes paid out of the proceeds of property sold under the foreclosure of a mechanic's lien. *Kahler v. Bettertton* (Civ. App.), 51 S. W. 289.

"We therefore conclude that the provisions of Section 50 of Article 16 do not limit the operation of Section 15 of Article 8, and that the homestead is liable not only for the taxes which are assessed upon it, but also for the penalties which the law prescribes in case of failure to make payment of such taxes. The district court and the Court of Civil Appeals erred in holding that the lots sought to be subjected were not liable to sale for the penalties and we hold that the City of San Antonio was entitled to enforce its lien against the said lots for the penalties, as well as for taxes." *City of San Antonio v. Toepperwein*, 133 S. W. 1416.

389. Execution on Property in Other Counties Than That Where Tax Is Due.—Whenever it shall appear to the collector of taxes in any county in this State that any person who is delinquent in the payment of his or her taxes has no property in his county out of which said amount of taxes can be collected, it shall be the duty of such collector to make out from the assessment list a true and complete list or schedule of the taxes due by said delinquent, which shall be certified to under the official seal and signature of said collector, and to forward the same to the collector of taxes of any county or counties where he shall have reason to believe said delinquent has property of any description, and, if said property is in any of the

unorganized counties of this State, then to the collector of the county to which said unorganized county is attached for judicial purposes; and, when received by said collector, he shall at once proceed to the collection of said tax by seizure and sale, in the same manner as if said taxes were originally assessed and due in his said county, and shall report to the collector from whom said list was received the taxes so collected by him. [R. S. Art. 7628.]

390. Tax Collector Not Allowed Credit for Delinquents, When.—No tax collector in this State shall be allowed credit for lists of delinquent or insolvent taxpayers, as provided by Article 7621 of the Revised Statutes of this State, until he makes oath in writing that he has exhausted all resources to collect said delinquent taxes under this chapter and under Articles 7624, 7625, 7626 and 7627. [R. S. Art. 7629.]

This article has reference to credits, to which the tax collector is entitled for his lists of delinquent taxpayers as provided in Art. 7621, and not to fees he is entitled to receive in suits for the collection of taxes. *Unknown Owner v. State*, 55 C. A. 300, 118 S. W. 804.

391. All Property Liable for Taxes.—All real and personal property held or owned by any person in this State shall be liable for all State and county taxes due by the owner thereof, including taxes on real estate, personal property and poll tax; and the collector of taxes shall levy on any personal or real property to be found in his county to satisfy all delinquent taxes, any law to the contrary notwithstanding. [R. S. Art. 7630.]

To constitute title or color of title all prerequisites must be shown and a levy must precede a sale for delinquent taxes. *Allen v. Courtney*, 24 C. A. 86, 58 S. W. 200, 201.

The tax collector may seize and sell property exempt from taxation. *Ring v. Williams*, 35 S. W. 733.

A tax collector who collects taxes upon property exempt from taxation is protected when the tax roll is legal in form and received from the proper authorities. *Land & Cattle Co. v. Board*, 80 Tex. 489, 16 S. W. 312.

A sale of mortgaged property by the tax collector for taxes, where the mortgage is registered according to law and unsatisfied, must be made subject to the mortgage lien. Such mortgage given for the purpose of hindering or delaying the collection of taxes would be void. *Opinion of Attorney General*.

Where a delinquent assessment embraces personal property, real estate and poll tax, the redemption of any particular piece or parcel of such real estate, where it has changed hands, is permissible upon the payment only of the taxes assessed against it. *Opinion of Attorney General*.

Suit can be maintained for the collection of delinquent taxes due on personal property. *Henrietta v. Eustis*, 87 Tex. 14, 26 S. W. 619; *San Antonio v. Berry*, 92 Tex. 319, 48 S. W. 496.

392. Sales of Property for Taxes, How Made.—In making sales of personal property for taxes, the collector shall give notice of the time and place of sale, together with a brief description of the property levied on and to be sold, for at least ten days previous to the day of sale, by advertisements in writing to be posted at the court house door, and at two other public places in the county; and such sale shall take place at the court house door of the county in which the assessment is made, by public auction. [R. S. Art. 7631.]

NOTE.—But question: Does the law passed by the Legislature of 1917 requiring all notices to be published in a newspaper apply?

Certain facts held essential to the validity of a tax sale. *Lewright v. Walls*, 55 C. A. 643, 119 S. W. 721.

393. Duty of Collector if Property Is Insufficient.—If personal property levied upon prove insufficient to satisfy the taxes and penalties due and costs accrued thereon, the collector shall levy upon and sell so much other personal taxable property belonging to the person as will be sufficient to satisfy such taxes, penalties and costs in the same manner as an original levy and sale; and, in all cases of sales for taxes, if there be an excess remaining in the hands of the collector, after satisfying all taxes, penalties and costs, the same shall be paid over to the original owner by the collector, or deposited in the hands of the county treasurer subject to the order of such owner. [R. S. Art. 7632.]

394. Sales of Real Property, When Made.—If the delinquent is not possessed of a sufficiency of personal property in the county, subject to seizure and sale, to satisfy all taxes due by him, the collector of taxes shall seize so much of the real estate of such delinquent, situated in the county, as will be sufficient to satisfy such taxes and all costs, and the same sell in accordance with the provisions of the succeeding article. [R. S. Art. 7633.]

395. Advertisements of Real Property for Sale, Etc.—In making sales of real property for taxes, the collector shall advertise the same for sale in some newspaper published in the county where the land is to be sold, for three successive weeks, if there be one; and the publisher of such newspaper shall receive as compensation not exceeding twenty-five cents for each tract or parcel of land so advertised, to be taxed as other costs of sale against such land; provided, the cost of advertising in a newspaper shall be deducted from the fees allowed the collector for advertising; and provided, that the Comptroller shall allow the collector twenty-five cents per tract for each tract of land bid off by the State; and, if there be no newspaper published in the county, or, there being a newspaper published

in the county, and the publisher thereof refuses to publish the advertisement at the price herein fixed, then advertisement shall be made by posting the same for thirty days previous to the day of sale, at the court house door and three other public places in the county where the land or lots are situated, giving in said advertisement such description as is given to the same on the tax rolls in his hands, stating the name of the owner, if known, and if unknown say "unknown," together with time, place and terms of sale; said sale to be for cash, to the highest bidder, at public outcry, at the court house door, and between legal hours, on the first Tuesday of the month. [R. S. Art. 7634.]

But see Chapter 179, Acts 1917, p. 391, requiring publication of all notices heretofore required to be posted.

See provisions of Chapter relating to "Delinquent Taxes."

Where publishers of newspapers agree to submit bids for publishing delinquent tax lists at a certain price, and to share the proceeds, a contract with one of them at the price so fixed is void. *City of Wichita Falls v. Skeen*, 18 C. A. 632, 45 S. W. 1037.

A failure to give the notice required by law of the place of sale vitiates the sale. *Henderson v. White*, 69 Tex. 103, 5 S. W. 374.

A sale of land for taxes advertised in the name of "J. A. Bowers," instead of "J. A. Rogers," held not voidable only. *Moore v. Rogers*, 100 Tex. 361, 99 S. W. 1023.

396. Prior to Sale List of Lands to Be Posted, How.—Prior to the sale of any real property for taxes in any county in this State, the collector of taxes shall advertise the same by posting a list of the names of the delinquents for thirty days as follows: One copy at the court house door of the county, and a copy at two other public places in the county where the lands or lots are situated. [R. S. Art. 7635.]

See notes under Section 395.

See chapter on "Delinquent Taxes."

Where a tax law requires copies of the assessment roll to be posted at certain places, a failure on the part of the assessor or collector to post the copies as required will invalidate the tax sale. *Yenda v. Wheeler*, 9 Tex. 408.

A failure of the assessor and collector to post a list of delinquent taxables, as prescribed by the statute, is a fatal objection to a tax title. *Pitts v. Booth*, 15 Tex. 453.

397. Sales May Be Continued From Day to Day, When.—As far as may be practicable, all the lands and town lots levied upon for taxes shall be advertised in one notice and be sold on the same day; and such sales may be continued from day to day until concluded; but at the close of each day's sale the collector of taxes

shall make proclamation of such continuance on the following day. No sale shall be considered complete until the payment of the purchase money; and, if the same is not paid before the completion of the tax sales, the collector shall resell the property, and continue such sale until the same is complete. [R. S. Art. 7636.]

398. Homesteads Are Liable Only for Their Own Taxes.—No real estate set apart, used or designated as a homestead shall be sold for taxes other than the taxes due on such homestead. [R. S. Art. 7637.]

See *San Antonio v. Toepperwein*, 133 S. W. 416.

The homestead is not protected by the Constitution from forced sale for lawful taxes that may be due on it. While that instrument throws the most ample protection around the homestead, it clearly intends that in return it shall bear its proportionate share of the burdens imposed by government, and it is liable as other real property to all taxes, State, county or municipal, that are justly and lawfully laid on the property of the citizen. *Lufkin v. Galveston*, 58 Tex. 545.

The homestead is exempt from forced sale for taxes, except such as are assessed against the homestead itself, and a sale of it for other taxes as well as those assessed against it is inhibited by the Constitution. *Wright v. Straub*, 64 Tex. 64.

Liability of the homestead for taxes. See *Higgins v. Bordages*, 88 Tex. 458, 31 S. W. 52, 803, 53 Am. St. Rep. 770.

Where the amount of taxes for which a homestead is alleged to have been bought is greater than the amount allowed by the Constitution, the sale is void. *Hayes v. Taylor*, 17 C. A. 449, 43 S. W. 314.

Taxes assessed against a homestead are a lien thereon, and it may be sold therefor, notwithstanding Const. Art. 16, par. 50, protecting the homestead against forced sale, and providing that no mortgage, deed of trust, or other lien on the homestead shall be valid; the words "other lien" including only those created by contract. *City of San Antonio v. Toepperwein*, 104 Tex. 43, 133 S. W. 416.

Costs of sale may be charged against a homestead sold under execution for taxes. *Bean v. City of Brownwood* (Civ. App.), 43 S. W. 1036.

Costs of a tax foreclosure suit of a homestead are a lien on the property so foreclosed. *City of San Antonio v. Berry*, 92 Tex. 319, 48 S. W. 496, affirming *Berry v. City of San Antonio* (Civ. App.), 46 S. W. 273.

In a foreclosure suit for taxes on a homestead the wife is not a necessary party. The owner has two years after sale to redeem. *Berry v. City of San Antonio*, 46 S. W. 273.

Under the Constitution, a tax lien exists on a homestead for the taxes thereon, with interest, and the cost of assessment and collection, including costs of suit, but not for the penalty provided by the Act of 1897, nor for interest costs and penalty due on taxes on other property. *City of Marlin v. Green*, 78 S. W. 704.

Where one party fails to pay taxes on homestead and personal property and becomes insolvent and sells his homestead to another party, the latter is liable for taxes due by first party on homestead but not for taxes on personal property of first party, and the latter can, therefore, pay taxes on his homestead. *Ruling of Attorney General*, p. 662, 1912-14.

399. Sales of Land for Delinquent Taxes, How Made.—The collector of taxes, in making sales for taxes due upon real estate, shall sell at auction, at the time and place appointed, so much of said real estate as may be necessary to pay the taxes and penalties due and all costs accruing thereon, and shall offer said real estate to the bidder who will pay the taxes and penalties due, and costs of sale and execution of deed, for the least amount of said real estate, who shall be deemed the highest bidder. Should a less amount of said real estate than the whole tract or parcel of said real estate levied upon be sold for the taxes and penalties due and all costs of sale and execution and deed, the collector shall, in making his deed to the purchaser, begin at some corner of said tract or parcel of land or town lot and designate the same in a square as near as practicable. [Id. p. 263, Sec. 17.]

This article does not apply to sales by sheriff as provided under regular delinquent tax chapter. *Masterson v. State*, 42 S. W. 1003.

NOTE.—See chapter dealing exclusively with subject of delinquent taxes.

400. The Tax Deed of the Collector and Its Requisites.—The collector of taxes shall execute and deliver to the purchaser, upon the payment of the amount for which the estate was sold, and costs and penalties, a deed for the real estate sold, which deed shall vest a good and perfect title to said land in the purchaser, if not redeemed in two years, as hereinafter provided; which deed shall state the cause of sale, the amount sold, the price for which the real estate was sold, the name of the person, firm, company or corporation on whom the demand for the taxes was made, provided, the name is known, and if unknown say "unknown," the same description of the land as is given in the tax rolls, and such other description as may be practicable for better identification; and when real estate has been sold he shall convey, subject to the right of redemption provided for in Article 7641, all the right and interest which the former owner had therein at the time when the assessment was made. [R. S. Art. 7639.]

See provisions of regular delinquent tax laws.

The declaration on the twenty-fifth section of the tax law of 1840 (Hart Dig. Art. 3007) that the tax deed should be good and effectual, both in law and equity, must be regarded as giving no special sanction to the conveyance, beyond that derived from the general principles of the law. (But *quaere*, if the doctrine had not been firmly established.) And hence, notwithstanding that provision, it is necessary for a plaintiff, claiming under a tax sale made by virtue of that law, to allege and prove that all the prerequisites were performed. *Hadley v. Tankesley*, 8 Tex. 12.

Where an assessment under the Act of 1848 purposed to be made in the

name of the owner, but the name was not that of the owner and did not appear to be so, except from the county map, the tax sale was invalid. although the records of the county did not contain anything to show who was the true owner, other than the map as aforesaid. *Yenda v. Wheeler*, 9 Tex. 408.

Construing the Act of March 20, 1848 (Hart Dig. Art. 3145), which provided that a tax collector's deed, "when recorded according to law, shall be prima facie evidence that all the requisites of the law have been complied with in making such sale," held, that such deed was not thereby made evidence of a compliance with the prerequisites to the acquisition and exercise of the power to sell. The statute applied only to the proceedings to be had after the right and power to sell were acquired. *Terrell v. Martin*, 64 Tex. 121, citing *Devine v. McCulloch*, 15 Tex. 491; *Kelley v. Medlin*, 26 Tex. 56, and other cases.

One claiming land under a tax sale made under the Act of 1840 (Early Laws, Art. 711) must aver and prove compliance on the part of the officer who executed the deed with all the essential requisites of the law for a valid tax sale. *Telfener v. Dillard*, 70 Tex. 139, 7 S. W. 847.

Where the tax deed assumes to convey the title of the unknown owner, without reference to the derivation of title or to the person under whom he claimed, and the proceedings have been otherwise regular it may be effectual; but where the officer undertakes to convey a particular title, the purchaser takes the title so conveyed; none other will pass by the deed. *Yenda v. Wheeler*, 9 Tex. 408; *Wheeler v. Yenda*, 11 Tex. 562.

Where a tax deed was admitted in evidence without objection, without evidence of the facts necessary to give the assessor and collector power to sell, and the court charged the jury that the tax deed was prima facie evidence that all the requirements of the law had been complied with, but the jury found against such title, under the charge of the court on another point, a question being made in this court whether the finding on such other point could be sustained, the court said it was not necessary to decide the question, because the party did not prove the facts necessary to give the assessor and collector power to sell, and affirmed the judgment. *Devine v. McCulloch*, 15 Tex. 488.

A collector's deed to property subject to taxation, and sold in accordance with law, vests a good and perfect title, which can only be impeached for actual fraud. Such a deed would, therefore, constitute a cloud upon the title of land regularly sold, but not liable for the tax, to prevent or remove which equity may be invoked. *Cassiano v. Ursuline Academy*, 64 Tex. 673.

To be of any force a tax title must be proved to be the consummation of a valid sale. State taxes are levied by general law and are not required to be proved; county taxes are levied by the commissioners' court, and the levy must be proved or the sale will not appear to have been made for a legal demand. *Greer v. Howell*, 64 Tex. 688.

A tax deed was attacked upon the following, among other grounds: 1. The tax rolls failed to show the number of the certificate by virtue of which the land was located. 2. The notice of sale fails to show when the land would be sold. 3. The deed made by the collector describes the land sold for taxes as being one hundred and sixty acres, patented to Jeremiah Heath, assignee of Benjamin F. Berry, describing it by metes and bounds, and excepting out of said tract eighty acres on which the taxes were paid.

by H. F. Heath. These objections are well taken. *Henderson v. White*, 69 Tex. 103, 5 S. W. 374.

A legal assessment, advertisement and tax sale of land must be clearly shown before any rights can be acquired under a tax title. *Railway Co. v. Poindexter*, 70 Tex. 98, 7 S. W. 316.

The petition alleged the existence of a void tax sale and that it was a cloud upon plaintiff's title. On the trial a tax deed for the land was produced, and there was no testimony to any fact upon which the legality of the tax sale could be based. Held, that it did not devolve upon the plaintiff to further show the invalidity of the tax deed. It being void, no testimony was required to authorize the court to treat it as invalid. *Dawson v. Ward*, 71 Tex. 72, 9 S. W. 106.

A tax sale of land for an amount greater than the tax collector is authorized by law to charge as fees is void. *Eustis v. City of Henrietta*, 91 Tex. 325, 43 S. W. 259.

Where several lots are separately assessed, tax deed showing the sale of them in gross is void. *Allen v. Courtney*, 24 C. A. 86, 58 S. W. 200.

A tax sale and the rights acquired thereunder are to be determined by the law in force at the time of the sale. *Bente v. Sullivan*, 52 C. A. 454, 115 S. W. 350.

A tax sale made during the civil war held not void. *Wright v. Giles* (Civ. App.), 129 S. W. 1163.

The power of the officer to sell land for the non-payment of taxes is a naked power, not coupled with an interest; and in all such cases the law requires that every prerequisite to the exercise of that power must precede its exercise; that the agent must pursue the power or his act will not be sustained by it. *Yenda v. Wheeler*, 9 Tex. 408.

It is settled that tax titles, when in every respect complete, may constitute perfect assurance of title; they may constitute the basis of good title under the statute of limitations independent of any judicial determination as to their validity, and under certain circumstances they are to be deemed colorable titles. Though invalid, a tax title is not necessarily without meritorious consideration, if the owner had reasonable grounds for believing that his title was good. *Hatchett v. Conner*, 30 Tex. 104; *House v. Stone*, 64 Tex. 677.

A tax deed is of itself no evidence of title in the purchaser at tax sale. *Pratt v. Jones*, 64 Tex. 694; *Dawson v. Ward*, 71 Tex. 72, 9 S. W. 106.

Claimant under tax deed must show county tax levied by the county commissioners' court, and that collector had power to sell. *Houston v. Washington*, 16 C. A. 504, 41 S. W. 135. But tax deed held conclusive upon the purchaser claiming thereunder as to the facts relating to the sale therein stated. *Eustis v. City of Henrietta*, 91 Tex. 325, 43 S. W. 259.

Tax deeds are not evidence of title without proof of compliance with the prerequisites of the law. *Boyd v. Miller*, 22 C. A. 165, 54 S. W. 411.

Unless evidence is offered to show that the requirements of the law with reference to sale for taxes had been complied with, so that a valid conveyance could be made, a tax deed is no evidence of title. *Zarate v. Villareal* (Civ. App.), 155 S. W. 328.

A falsity which might probably mislead the owner, in the designation or description in the assessment of lands not rendered for taxation, runs through and invalidates all subsequent proceedings. *Yenda v. Wheeler*, 9 Tex. 408.

Ordinarily it is requisite to the validity of a tax sale that the property sold shall have been described when listed for taxation by the number of the certificate under which it was surveyed. *Henderson v. White*, 69 Tex. 103, 5 S. W. 374; *McCormick v. Edwards*, 69 Tex. 106, 6 S. W. 32.

A deed purporting to convey land which describes it only by quantity, and as being part of a larger tract, with nothing whereby to identify what specific portion of the larger tract is intended to be conveyed, is void for uncertainty of description of tax title. *Lumber Co. v. Hancock*, 70 Tex., 312, 7 S. W. 724.

A conveyance by a tax collector or sheriff of a number of acres to be taken out of a larger survey is void for uncertainty. *Morgan v. Smith*, 70 Tex. 637, 8 S. W. 528.

A patent ambiguity in description of the land in a tax deed renders it void. *Grumbley v. Busse*, 11 C. A. 319, 32 S. W. 438.

Tax deed held void for want of sufficient description. *Ozee v. City of Henrietta*, 90 Tex. 334, 38 S. W. 768.

Tax deeds held not void for ambiguity and uncertainty of description. *Homes v. City of Henrietta* (Civ. App.), 41 S. W. 738. Nor for insufficiency of description. *Earle v. Same*, Id., 727.

A sheriff's tax deed held not void for insufficiency in description of property. *Murphy v. Williams* (Civ. App.), 56 S. W. 695.

If a tax deed shows upon its face that it is void it cannot be the foundation for a claim for the value of improvements made in good faith. *Hatchett v. Conner*, 30 Tex. 104; *House v. Stone*, 64 Tex. 677.

One claiming under an invalid tax title, not void on its face, is entitled to adduce evidence as to improvements under his suggestion of good faith, and to have that issue determined. *French v. Grenet*, 57 Tex. 273, and *Wofford v. McKinna*, 23 Tex. 36, 76 Am. Dec. 53, approved, and *Robson v. Osborn*, 13 Tex. 298, questioned. *Hatchett v. Conner*, 30 Tex. 104; *House v. Stone*, 64 Tex. 677.

401. Sales by the Collector to Be Reported to Commissioners' Court.—When the collector of taxes shall have made sale of any real estate under this chapter, it shall be his duty to make immediate return of said sale to the commissioners' court, stating in said return the land sold, the name of the owner, if known, and if unknown, state the fact, the time of sale, the amount for which said sale was made, together with the name of the purchaser, which return shall be entered of record on the minute books of said court. [R. S. Art. 7640.]

NOTE.—See provisions of chapter herein dealing exclusively with the subject of delinquent taxes, etc.

402. Redemption of Land Sold for Taxes by the Collector.—The owner of real estate sold for the payment of taxes, or his heirs or assigns or legal representatives, may, within two years from the date of sale, redeem the estate sold by paying or tendering to the purchaser, his heirs or legal representative, double the amount of money paid for the land. [R. S. Art. 7641.]

NOTE.—See chapter dealing exclusively with subject of delinquent taxes.

A tender to the purchaser at tax sale, under the third section of the Act of June 2, 1873 (Thirteenth Legislature p. 187), concerning taxes, which is similar in terms to this article, the full amount of the purchase money paid for land at such sale, within twelve months, with one year's interest on the same, at the rate of 25 per cent per annum, worked ipso facto an immediate redemption of the land by the original owner, and left the purchaser at tax sale without title. *Burns v. Ledbetter*, 54 Tex. 374.

An owner of land sold for taxes may redeem by payment of the required amount to the purchaser, even when such purchaser has transferred his interest. *Turner v. Smith*, 56 C. A. 1, 119 S. W. 922.

403. Redemption Within Two Years, When.—The owner or any one having an interest in lands or lots heretofore sold to the State or any city or town under the decree of court in any suit or suits brought for the collection of the taxes thereon, or by a collector of taxes or otherwise, shall have the right within two years from August 3, A. D. 1909, to redeem the same upon the payment of the amount of taxes for which sale was made, together with all costs, penalties and interest now required by law, and also the payment of all taxes, interest, penalties and costs on or against said lands or lots at the time of said redemption. And, where lands or lots shall hereafter be sold to the State, or to any city or town, for taxes under decree of court in any suit or suits brought for collection of taxes thereon, or by a collector of taxes or otherwise, the owner having an interest in such lands or lots shall have the right to redeem the same within two years after such sale upon the payment of the amount of taxes for which sale was made, together with all costs, penalties and interest now required by law, and also the payment of all the taxes, interest, penalties, cost on or against said land or lots at the time of redemption. [R. S. Art. 7642.]

NOTE.—See delinquent tax chapter herein.

404. Redemption From Private Purchasers; How Made.—Any person having the right to redeem any land sold at tax sale may do so by payment, within the time prescribed by law, to the collector of taxes of the county in which the said land was sold, of the amount which the law requires to be paid; provided, that the owner of said land, or his agent, shall first have made affidavit before some officer authorized by law to administer oaths, that he has made diligent search in the county where said land is situated for the purchaser thereof at the tax sale, and has failed to find him, or that the purchaser at such tax sale is not a resident of the county in which the land is situated, or that he and the purchaser can not agree on the amount of redemption money. In such cases only

shall the owner or agent be authorized to redeem the same by the payment to the collector of taxes. [R. S. Art. 7643.]

NOTE.—See chapter herein dealing exclusively with subject of delinquent taxes.

405. Receipt of Collector, Notice When.—It shall be the duty of any collector of taxes, to whom payment is made under the provisions of this chapter, to give a receipt therefor, signed by him officially, in the presence of two witnesses; which said receipt, when duly recorded, shall be notice to all persons that the land therein described has been redeemed; and the collector of taxes shall, on demand, pay over to the purchaser at said tax sale the money thus received by him. [R. S. Art. 7644.]

NOTE.—See Acts 1915 (Section in this chapter) for recording of tax receipts.

406. Relief for Owners of Property, When.—Any person whose land has been rendered for taxation, whether the same was rendered in the name of the original grantee or not, and has also been placed upon the unrendered rolls for the same year, shall be entitled to relief upon complying with the requirements hereinafter indicated. [R. S. Art. 7645.]

407. Method of Cancelling Taxes Where Mistake in Rendering Same.—If any such lands shall have been sold for the taxes charged upon the unrendered rolls, and bought by the State, the owner thereof, his agent or attorney, shall present to the tax collector of the county in which the land is situated a sworn statement to the effect that the same land has been rendered for taxation, and placed upon the regular assessment rolls for the year mentioned. Said affidavit shall contain an accurate description of the land, and be accompanied with the certificate of the assessor that the same is true and correct; and the tax collector shall thereupon present such person with a written statement, officially signed, that said tax has been canceled, and make a note of the same upon the unrendered rolls; provided, the provisions of this article shall apply to such lands at any time after the collector shall receive the rolls until the same shall have gone into the hands of a private purchaser; and if the owner shall have paid the taxes charged upon the unrendered rolls at any time previous he shall be entitled to the warrant of the Comptroller for the amount so paid, in the same manner as is provided in Article 7647 of this chapter, in cases of redemption from individual purchasers; provided further, that the tax

collector shall make no charge whatever for the duties herein mentioned. [R. S. Art. 7646.]

408. Duty of Collector to Issue Certificate of Redemption From Collector, When.—When the owner of such lands shall have redeemed the same from a private purchaser, it shall be the duty of the tax collector to furnish him a certificate to that effect; and, upon presentment of said certificate to the Comptroller, the Comptroller shall issue to him a warrant upon the treasury of the State for the amount of such tax. This warrant shall be receivable for all taxes to the State. For issuing the certificate provided for in this article, the tax collector shall be allowed the sum of fifty cents, to be paid by the applicant. [R. S. Art. 7647.]

NOTE.—It is not the practice of the Comptroller's Department to issue such certificates, but the author believes it should be done under this article of the statute.

409. Duty of Collector to Bid in Lands for State, When.—Should the collector of taxes fail to make sale of any real estate for want of a purchaser, he shall bid the same off to the State for the taxes and penalties due and all costs accruing thereon, and execute a deed to the State; and one deed shall include all tracts of land bid off to the State at such tax sale, and make due return thereof, under such forms and directions as the Comptroller may furnish and direct; and, after sale and purchase by the State of any real estate, it shall not be lawful for said collector to levy upon or advertise or sell the same for any remaining or accrued taxes due thereon until the same shall have been redeemed by the owner or is sold by the State. Said collector shall, on final settlement of his accounts with the commissioners' court and the Comptroller of Public Accounts, be entitled to a credit for the amount of taxes due the State and county, respectively, for which the land and lots were bid off to the State. [R. S. Art. 7648.]

NOTE.—See chapter herein dealing with subject of delinquent taxes, etc., exclusively.

In action of trespass to try title the defendant claimed under a grant of land made by the governor of the State of Coahuila and Texas in 1832, the validity of which was questioned on the ground that the officers by whom it was issued had no such authority, and if they had it was made in violation of law. It was held that the construction of their powers and of the laws which confirmed them, adopted and acted upon by the authorities under the former government of the country, must be respected until it be shown that they have clearly transcended their powers, or have acted manifestly in contravention of law. *Hancock v. McKinney*, 7 Tex. 384; *Martin v. Parker*, 26 Tex. 253. As was done in the following

cases: *Jones v. Garza*, 11 Tex. 186; *Norton v. Mitchell*, 13 Tex. 47; *Jones v. Muisbach*, 26 Tex. 235; *Holliday v. Harvey*, 39 Tex. 670; *Baldrige v. Penland*, 68 Tex. 441, 4 S. W. 565; *Clark v. Hills*, 67 Tex. 141, 2 S. W. 356; *Johns v. Schultz*, 47 Tex. 578. See *Von Rosenberg v. Haynes*, 20 S. W. 143, 85 Tex. 357; *Guerra v. City of San Antonio*, 1 C. A. 422, 20 S. W. 935.

In a suit against a tax collector and the securities on his official bond, for failing to pay over money collected as such, it should be shown that the tax collector received the tax rolls from the proper authorities, and that they were in his hands for collection. When he thus receives them, he is justly chargeable with the whole amount of the rolls. The burden is then, and not before, on the collector to show that he has collected and paid over, or to show lawful cause for his failure to do so. *Cordray v. State*, 55 Tex. 141; *Swan v. State*, 48 Tex. 121; *Shaw v. State*, 43 Tex. 359; *Allbright v. Governor*, 25 Tex. 695, and other cases cited and followed; *Houston County v. Dwyer*, 59 Tex. 113.

The presumption obtains that taxes received from non-residents of a county were paid on legal assessments on personal property. *Webb County v. Gonzales*, 69 Tex. 455, 6 S. W. 781.

Even after the lapse of forty years, no presumption will be indulged that the laws regulating the assessment and sale of land for taxes have been complied with so as to supply the missing evidence of power in the officer to make the sale. *Telfener v. Dillard*, 70 Tex. 139, 7 S. W. 847.

After the lapse of over a century, followed by possession under a grant executed under the Spanish government, it ought not to be claimed that the officer extending the grants did not have power to do so. A testimony of the acts of such officer in appointing surveyor, etc., would prove itself after lapse of time. *Von Rosenberg v. Haynes*, 85 Tex. 357, 20 S. W. 143.

It is well settled in this State that the acts of an officer assuming to discharge an attribute of his office are presumed to be within the scope of his authority unless the contrary be shown. *Guerra v. City of San Antonio*, 1 C. A. 422, 20 S. W. 935.

There is no presumption in favor of the validity of official acts involving the forfeiture of an individual's rights. *Irwin & Sanders v. Mayes*, 31 C. A. 517, 73 S. W. 33.

Where, in an action to quiet title to land, plaintiff claimed under proceedings to foreclose a deed of trust for non-payment of taxes, she was not bound to prove that the taxes unpaid were properly levied. *Clark v. Elmendorf* (Civ. App.), 78 S. W. 538.

It is a presumption of laws that the acts of officers are within their authority. *City of San Antonio v. Tobin* (Civ. App.), 101 S. W. 269.

The presumption, in the absence of proof to the contrary, is that the officer issuing a liquor license complied with the law (Art. 7427, et seq.), and that application therefor had been made. The bond in this case recites that application was made. *White v. Manning*, 46 C. A. 298, 102 S. W. 1161.

It will be presumed, in the absence of evidence to the contrary, that a voter produced the proper evidence that he had paid his poll tax as required by law. *Savage v. Umphries* (Civ. App.), 118 S. W. 893.

A presumption can no more be indulged in favor of the validity of a tax sale, where the State is the purchaser, than where an individual purchases. *Lewright v. Walls*, 55 C. A. 643, 119 S. W. 721.

It is always presumed that in any official act or act purporting to be official the officer has not exceeded his authority. *Slaughter v. Cooper*, 56 C. A. 169, 121 S. W. 173.

Where the conduct of an officer is attacked as in excess of authority, and there are any conditions under which he may exercise the powers assumed, the court will presume that such conditions existed and formed the basis of his conduct. *Sanders State Bank v. Hawkins* (Civ. App.), 142 S. W. 84.

One alleging that an officer has violated his instructions must show a violation and must show that the instructions were received, and the court will require full proof that the officer has exceeded his powers before it will so determine. *State v. Palacios* (Civ. App.), 150 S. W. 229.

The court would not presume under the circumstances that a bid for a street improvement was submitted in compliance with law, nor that it was the best that could have been obtained, nor that the abutters were not injured by irregularities concerning same. *City of Waco v. Chamberlain* (Civ. App.), 45 S. W. 191.

The presumption is that a city council, in making ordinances levying taxes, acted lawfully. *Berry v. City of San Antonio* (Civ. App.), 46 S. W. 273.

Persons who fill the office of the board of equalization of a city are at least de facto officers, and their legal appointment will be presumed until the contrary is shown. *Nalle v. City of Austin*, 23 C. A. 595, 56 S. W. 954.

Where a city is authorized to levy a license tax on particular property or business, and such tax has been imposed, it will be presumed that the levy was made for the purposes authorized by law. *Brown v. City of Galveston*, 97 Tex. 1, 75 S. W. 488.

Where a city has authority to refund waterworks bonds, it will be presumed in the absence of any facts stated to the contrary, that the law was complied with, and a taxpayer cannot set up irregularities in the issuance of the bonds as a defense against the collection of the tax. *City of Tyler v. Tyler B. & L. Ass'n*, 98 Tex. 69, 81 S. W. 4.

Facts held to warrant a presumption that the assistant auditor of a city had authority to sign a warrant. *City of Houston v. Stewart*, 40 C. A. 499, 90 S. W. 49.

A patent is not void because no survey of the land was ever made. In the absence of evidence to the contrary a survey will be presumed. *Williamson v. Simpson*, 16 Tex. 440; *Stafford v. King*, 30 Tex. 270, 94 Am. Dec. 304; *Boon v. Hunter*, 62 Tex. 582; *Gerald v. Freeman*, 68 Tex. 201, 4 S. W. 256; *Moore v. Reily*, 68 Tex. 668, 5 S. W. 618; *Lilly v. Blum*, 70 Tex. 705, 6 S. W. 279; *Brown v. Bedinger*, 72 Tex. 247, 10 S. W. 90; *Booker v. Hart*, 77 Tex. 146, 12 S. W. 16; *Rand v. Cartwright*, 82 Tex. 399, 18 S. W. 794. See *Railway Co. v. Uribe*, 85 Tex. 386, 20 S. W. 153; *Groesbeck v. Harris* 82 Tex. 411, 19 S. W. 850; *Robertson v. Mooney*, 1 C. A. 379, 21 S. W. 143.

The plaintiff, in an action to try title, claimed the land in controversy by patent dated in 1851. The defendant claimed under a grant from the State of Coahuila and Texas, dated in 1834, and offered in evidence a land office copy in support of his title. The plaintiff claiming the superior title, on the ground that the older grant was not filed in the land office at the inception of his title, the court say it is to be presumed that defendant's title was filed in the land office within the time prescribed by law,

and therefore antedated plaintiff's title. *Nicholson v. Horton*, 23 Tex. 47.

In the absence of evidence to the contrary it is presumed that a survey is made for the grantee named in the certificate. *Snider v. Railroad Co.*, 52 Tex. 306.

The action of a legally constituted board of land commissioners in 1838, deciding who were the heirs of a deceased party, who had been entitled under the law to land, and issuing to them a headright certificate, is conclusive of their right to it, on a collateral inquiry, whether the decision of the board was right or not. *Burkett v. Scarbrough*, 59 Tex. 495.

In a conflict of title to land, in support of the action of the proper officers in issuing the patent, it was presumed that the field-notes of a previous survey were withdrawn by the person interested in the survey. *Atkinson v. Ward*, 61 Tex. 383.

It is presumed that all facts necessary existed to authorize the issuance of a patent. *Sheppard v. Avery*, 89 Tex. 301, 34 S. W. 440.

It is presumed that the land was located before the land certificate was filed. *Timmony v. Burns* (Civ. App.), 42 S. W. 133.

Classification and appraisal of public lands before sale must not only be alleged, but proved; there being no presumption thereof. *Thompson v. Gallagher*, 32 C. A. 591, 75 S. W. 567.

Where, in trespass to try title, both parties claimed under applications to purchase from the State and defendant was in possession, the burden was on plaintiff to show the invalidity of defendant's purchase. *Jones v. Wright*, 98 Tex. 457, 84 S. W. 1053.

Where plaintiff made application to purchase from the State, but the land was awarded to defendant on his later application, held to have the burden of proof to overcome the presumption of regularity. *Smith v. Hughes*, 39 C. A. 113, 86 S. W. 936.

When one, suing upon his rejected application for the purchase of school land, has shown compliance with the statute, he has overcome the presumption that the commissioner of the land office has acted lawfully. *Knapp v. Patterson* (Civ. App.), 87 S. W. 394.

Where the land commissioner canceled an award of school lands because of mistake in classification, presumption of regularity of his act held to apply to the cancellation and not to the award. *Smithers v. Lowrance* (Civ. App.), 91 S. W. 606.

Cancellation of award of school lands by land commissioner, indorsed on the purchaser's obligation and on classification and appraisal record, held provable by certified copies of the documents. *Id.*

No presumption arises in favor of the validity of an award of land by the commissioner of the general land office during the life of a lease as against the validity of his action in making the lease. *Buchanan v. Barnsley*, 51 C. A. 253, 112 S. W. 118.

Under Paschal's Dig. Arts. 4302 and 4211 et seq., it was the duty of the commissioner of the general land office to satisfy himself that the original certificate was a valid one, before issuing an unlocated balance certificate, and it will be presumed that he discharged this duty; hence, where a survey was made in B. county in 1838, under which land was patented in 1847 and canceled in 1855, because in conflict with older valid claims, and not for any infirmity of the certificate, and another survey, made in B. county in 1847 by virtue of the certificate, was patented during that year, and the commissioner in 1855, after canceling the patent issued on

the survey made in 1838, again recognized the certificate as valid by issuing the unlocated balance certificate, the original certificate was *prima facie* valid. *Compton v. Hatch* (Civ. App.), 135 S. W. 1052.

In 1854 the chief justice and county commissioners conveyed a lot in the town of Crockett donated to the county; the records of the county had been destroyed, and with them the deed of gift, and its terms and conditions were not known. It was shown that the lots in the town had, since 1837, been conveyed in the same manner. It was held that it is to be presumed that the sale and conveyance of the lots was in the manner authorized by the deed to the county, or that by proper orders of the county court the officers who made the conveyance were properly appointed as commissioners, etc. *Wooters v. Hall*, 61 Tex. 15.

There is no presumption of the validity of special proceedings by the county courts directed towards the establishment of boundary lines. *Wise County v. Montague County*, 21 C. A. 444, 52 S. W. 615.

A certificate of the county clerk of a county attached to an abstract of judgment held to presumptively show an indexing of the judgment in alphabetical order, as required by statute. *Abree v. Bargas*, 45 C. A. 243, 100 S. W. 191.

In a proceeding involving the validity of an order of the commissioners' court changing the course of a public road, it should be presumed in favor of the order, in the absence of proof to the contrary, that the court took every preliminary step essential to its validity. *Smith v. Ernest*, 46 C. A. 247, 102 S. W. 129.

Where the certificate of the officer recites that he had affixed his official seal to an instrument, it is presumed that it was properly attached, although in the copy from the record its place is not indicated by a scroll and the initial letters "L. S.," as is customary. *Alexander v. Houghton*, 26 S. W. 1102; *Citing Hines v. Thorn*, 57 Tex. 104; *Witt v. Harlan*, 66 Tex. 661, 2 S. W. 41; *Coffey v. Hendricks*, 66 Tex. 677, 2 S. W. 47.

The acknowledgment of a married woman being in statutory form, the law will presume that the officer performed his duty, and that the certificate of acknowledgment is true in all its details. *Ward v. Baker* (Civ. App.), 135 S. W. 620.

In an action of trespass to try title the defendants offered in evidence duly certified copies of a power of attorney, and of a deed executed in 1835 before a judge of the first instance. They were objected to on the ground that the certificate of the clerk did not show that the originals had been filed prior to the first Monday in February, 1837. Held that, in the absence of proof to the contrary, it is to be presumed that the originals were filed at the proper time; and the certificate of the clerk, to the effect that they are archives of his office, is equivalent to a certificate that they had been filed at the proper time. *Hooper v. Hall*, 35 Tex. 82.

No presumption arises from evidence that the abstract of the judgment was recorded that the index thereof has been made. *Miller v. Koertgem*, 70 Tex. 162, 7 S. W. 691, 8 Am. St. Rep. 587.

Where clerk recorded instrument, it will be presumed that certificate of acknowledgment duly attested was annexed, it being necessary for recordation, so as to render certified copy admissible. *Caudle v. Williams* (Civ. App.), 51 S. W. 560.

Where a case is appealed to the supreme court and remanded, it will be presumed that the clerk either collected the costs before remand, or is-

sued an execution for costs thereafter. *Gilliean v. Witherspoon* (Civ. App.), 121 S. W. 909.

Where the filing of a citation by the clerk is a judicial act required by statute, and a citation requiring defendant to appear and answer November 8, 1909, is entered by the clerk and indorsed, "Filed 20th day of September, 1909," it will be presumed that the return made upon the writ was made before it was filed. *Lester v. First State Bank* (Civ. App.), 139 S. W. 661.

The maxim, "*Omnia Praesumuntur recte*," is only applicable to the record of judicial proceedings, and is not to be applied to the exercise of ministerial functions. Thus, the recitals in a sheriff's deed are regarded only as an inducement, and are not evidence of his power to sell, which must be shown independently. *Leland v. Wilson*, 34 Tex. 79.

Presumption will not obtain, from the fact that the judgment recites that all the defendants were served with personal service, that service was made on an amended petition. *Carlton v. Miller*, 21 S. W. 697, 2 C. A. 619.

Two executions in same case were issued on the same day, one to the sheriff of the county where the judgment was rendered. This execution was returned on the day issued. Held, that it will be presumed that such return was made before the issuance of the other, which was directed to officers of another county, and under which sale was made. *Brackenridge v. Cobb*, 85 Tex. 448, 21 S. W. 1034.

A citation, duly issued and served by the sheriff, and acted on by the court in entering a default judgment, will be presumed to have been returned by the sheriff as required by law. *Calvert, W. & B. V. Ry. Co. v. Driskill*, 31 C. A. 200, 71 S. W. 997.

The presumption in favor of the regularity of official conduct will not apply to hold a sheriff liable for the acts of his deputies. *Brown v. Wallis* (Civ. App.), 101 S. W. 1088.

In the absence of a showing to the contrary, it will not be presumed that a constable made service of process outside of his county. *Mahan v. McManus* (Civ. App.), 102 S. W. 789.

In the absence of any showing to that effect it will be presumed that when an officer returned a delivery bond, on the nondelivery of the property to him that he marked it "forfeited." *Webb v. Caldwell* (Civ. App.), 112 S. W. 98.

A petition against unknown heirs was filed on August 10, 1898; the following term of court beginning on September 26th. The sheriff returned a publication of the citation, according to its direction to him, for four weeks with the dates thereof to the September term, and judgment was rendered at the next term thereafter against the unknown heirs, but there was no recital in the judgment of due service of process. Held, that it could not be presumed in support of jurisdiction that proper service was had; it affirmatively appearing from the entire record that there was no legal service. *Houston Oil Co. of Texas, v. Davis* (Civ. App.), 132 S. W. 808.

The court, in the absence of a contrary showing, held authorized to presume that a sheriff selling land under attachment gave notice of sale in the manner required by law. *Levy v. Persons* (Civ. App.), 145 S. W. 286.

Where there is no evidence of any private grudge or unfriendly relation between a marshal and a person arrested by him, the court will presume that he was acting as an official merely. *Riter v. Neatherly* (Civ. App.), 157 S. W. 439.

It will be presumed that the act of the sanitary commission in excluding

cattle from the State as coming from an infected district was properly exercised. *St. Louis S. W. Ry. Co. v. Smith*, 20 C. A. 451, 49 S. W. 627.

The presumption in favor of the validity of an official act held insufficient to render the existence of a receipt for the franchise tax of a foreign corporation affirmative evidence of the issuance of a permit to do business, notwithstanding the law as to the duties of the Secretary of State. *Turner v. National Cotton Oil Co.*, 50 C. A. 468, 109 S. W. 1112.

Where it was apparent from the face of a grant by the Spanish government that the governor waived the use of stamped paper in making it, it must be presumed that he had authority to do so. *Flores v. Hovel* (Civ. App.), 125 S. W. 606.

In the absence of evidence to the contrary, it will be presumed that the governor of the province of Texas had authority to execute a grant of land. *Id.*

In the absence of a showing to the contrary, the court must presume that the board of medical examiners did its duty in issuing a certificate authorizing the practice of medicine. *State Board of Medical Examiners v. Taylor*, 103 Tex. 444, 129 S. W. 600.

The supreme court will presume that the governor will seek the public good in discharging his official duties. *Conley v. Daughters of the Republic* (Sup.), 157 S. W. 937.

Where a survey was actually made and the field notes recorded and a patent subsequently issued by the proper authorities, it must be presumed that the surveyor's action was regular. *Waterhouse v. Corbett*, 43 C. A. 512, 96 S. W. 651.

In the absence of proof it must be presumed that surveyors did their duty and marked corners with some object of permanence. *Thatcher v. Matthews*, 101 Tex. 122, 105 S. W. 317.

In the absence of proof to the contrary, it will be presumed that a surveyor of a grant of public lands performed his duty. *Finberg v. Gilbert*, 104 Tex. 539, 141 S. W. 82.

410. Owner or His Agent May Redeem, How.—The owner, or his agent, of any lands that may have been conveyed to the State under the provisions of the foregoing article, desiring to redeem the same, may do so by depositing with the collector of the county in which the lands were sold double the amount of the purchase money and all accrued taxes thereon, within two years from the date of the deed to the State; and it shall be the duty of such collector to execute a receipt to such owner, or agents, giving therein the amount of money received, and a description of the land so as to identify the same, and sign and seal the same officially; and, upon presentation of such receipt to the Comptroller of Public Accounts, he shall execute to the owner a relinquishment under his signature and seal of office, which may be admitted to record in like manner with other conveyances of land. [R. S. Art. 7649.]

NOTE.—This "relinquishment" is a regular redemption certificate from the State.

411. Shall Be Sold if Owner Fails to Redeem.—In case said land shall not have been redeemed as provided in Article 7648 [7649], then the same may be sold as provided by Article 7648. [R. S. Art. 7650.]

412. Owners May Redeem by Paying Costs, Etc.—The owner of real estate which has been bought in by the State for taxes, his heirs or assigns, may redeem the same at any time prior to the sale thereof, by the payment to the collector of the county in which such real estate is situated, or to the Comptroller, if in an unorganized county, of the amount designated by the Comptroller as due thereon with costs of advertisement; and provided, further, that if it shall at any time appear to the satisfaction of the Comptroller that any land has been sold to the State for taxes which have been paid, or that the sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall, upon the payment of the amount that may be due thereon, cancel such sale; and in all cases he shall deliver to the owner of the land, or his agent, a certificate under seal of his department, setting forth the fact that such land has been redeemed, or that such sale has been canceled which certificate shall release the interest of the State, and the same may be recorded in the proper county as other conveyances of real estate are recorded. [R. S. Art. 7651.]

NOTE.—This section provides for what is known as "cancellation certificates," which are issued by the State Comptroller.

413. Commissioners' Court to Sit as a Board of Inquiry in Cases of Double Payment.—The commissioners' courts of the several counties in this State shall, at the regular terms of said courts, sit as a court of inquiry in cases where land has been erroneously rendered for taxes; and any land owner whose land has been or may be sold to the State for taxes may appear before said court in person or by proxy and show to the satisfaction of a majority of said court that the taxes for which his or her lands have been sold have been paid, although the same was rendered in an incorrect abstract number or survey or original grantee; thereupon said commissioners' court shall issue to the said land owner a certificate setting forth fully said facts, which certificate shall be signed officially by the county judge of said county; and, upon the presentation of said certificate to the Comptroller of Public Accounts, he shall execute and deliver to said land owner a valid deed relinquishing all the right, title and interest the State may have acquired in and to said land by reason of such tax sale. [R. S. Art. 7652.]

NOTE.—This “deed” is simply a “cancellation certificate” similar to the one provided for by Section 412, issued and signed by the Comptroller.

NOTE.—Above Section provides method of relief in cases where there has been double payment of taxes.

414. Duty of Tax Collector to File Complaint, When.—It shall be the duty of the tax collector to make an affidavit before any justice of the peace against any person, firm or association of persons engaged in or pursuing any occupation on which, under the laws of this State, a tax is imposed, who fails or refuses to pay the same. [R. S. Art. 7653.]

415. Compensation and Commissions of Tax Collectors.—There shall be paid for the collection of taxes, as compensation for the services of the collector, beginning with the first day of September of each year, five per cent on the first ten thousand dollars collected for the State, and four per cent on the next ten thousand dollars collected for the State, and one per cent on all collected over that sum; for collecting the county taxes, five per cent on the first five thousand dollars of such taxes collected, and four per cent on the next five thousand dollars collected, and one and one-fourth per cent on all such taxes collected over that sum; and, in counties owing subsidies to railroads, the collectors shall receive only one per cent for collecting such railroad tax; and, in cases where property is levied upon and sold for taxes, he shall receive the same compensation as allowed by law to sheriffs or constables upon making a levy and sale in similar cases, but in no case to include commissions on such sales. [R. S. Art. 7654.]

County tax collectors entitled to same compensation for selling property for taxes as sheriff gets for execution sales. *Eustis v. Henrietta*, 91 Tex. 325, 43 S. W. 259.

A person duly elected to the office of tax collector held entitled to the office and emoluments as soon as he had taken the oath of office and qualified. *Graves v. Bullen*, 53 C. A. 261, 115 S. W. 1177.

NOTE.—See provisions of chapter herein relating to duties of certain officers.

416. Compensation of Tax Collector on Occupation Tax.—And on all occupations and license taxes collected, five per cent. [R. S. Art. 7655.]

417. Compensation of Tax Collector for One Levy Only, Etc.—In making levies upon different tracts of land belonging to the same individual, corporation or company, the collector shall be entitled to charge for only one levy; and in all cases of advertisement of lands for tax sales he shall be entitled to charge for any one tract the exact proportion of the amount paid for the whole

advertisement which said tract bears to all other tracts advertised, and no more. And, for any greater charge under this article, the collector shall be deemed guilty of extortion and be punished as provided in the Penal Code. [R. S. Art. 7656.]

Facts held to show that a tax sale was not in excess of the costs authorized by law. *Eustis v. City of Henrietta* (Civ. App.), 41 S. W. 720.

A county or city tax collector can charge for only one levy, no matter how many pieces of property belonging to the same man are included in levy. *Eustis v. Henrietta*, 91 Tex. 325, 43 S. W. 259.

418. Taxes Upon Lands of Non-Residents in Unorganized Counties to Be Paid to Comptroller.—The taxes upon lands lying in and owned by non-residents of unorganized counties, and upon land situated in the territory not laid off into counties, shall be paid and collected at the office of the Comptroller of Public Accounts, under such regulations as he may adopt for that purpose. [R. S. Art. 7657; Const. Art. 8, Sec. 12.]

Where the owner of real estate rendered the same to the Comptroller and paid the taxes within the time prescribed by law, a judgment for delinquent taxes in a suit against unknown owners was void because beyond the jurisdiction of the court. *Mote v. Thompson*, (T. C. A.), 156 S. W. 1105.

419. To Account for Payment of Moneys.—All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to the State, and pay the same over to the State Treasurer whenever and as often as they may be directed so to do by the Comptroller of Public Accounts; provided, that tax collectors shall have thirty days from the date of such direction within which to comply with the same. [R. S. Art. 7658.]

The collector's reports and remittances of taxes collected on account of the State and the county are independent of each other, *T. & L. C. C. v. Hemphill County* (Civ. App.), 61 S. W. 334.

After the collection, the collector is required under penalties to promptly report and remit all taxes collected by him to the State and county treasurers, without excepting cases in which suits, however promptly filed, may be instituted for the recovery thereof. *Id.*

Certain facts held not to excuse a county tax collector disobeying an order of the commissioners' court to make payment. *Bailey v. Aransas County*, 46 C. A. 547, 102 S. W. 1159.

420. How Money Collected Shall Be Accounted for.—All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to

their respective counties, cities or towns, and pay the same over to the respective county treasurers or city treasurers, whenever and as often as they may be directed so to do by the respective county judges, or county commissioners' courts, or mayor or board of aldermen; provided, that tax collectors shall have ten days from the date of such direction within which to comply with the same. [R. S. Art. 7659.]

421. How Notification to Pay May Be Made.—The notification and direction provided for in the two preceding articles may be verbal, written, or by telegram; and, if written or by telegram, proof of the deposit in the postoffice or telegraph office of such notification and direction, with postage or charges duly prepaid and correctly addressed, shall be prima facie evidence of the fact of such notification and direction having been given, and of the time when the same was given. [R. S. Art. 7660.]

422. Duty of District and County Attorneys to Sue for Taxes on Personal Property.—Hereafter it shall be the duty of the district or county attorney of the respective counties of this State, by order of the commissioners' court, to institute suit in the name of this State, for the recovery of all money due the State and county as taxes due and unpaid on unrendered personal property; and, in all suits where judgments are obtained under this Act, the person owning the property on which there are taxes due the State and county shall be liable for all costs; provided, such suits may be brought for all taxes so due and unpaid for which such delinquent taxpayer may be in arrears for and since the year 1886; and provided, further, the State and county shall be exempt from liability for any costs growing out of such action; provided, all suits brought under this article for the recovery of taxes due on personal property shall be brought against the person or persons who owned the property at the time such property should have been listed or assessed for taxation; provided, that no suit shall be brought until after demand is made by the collector for taxes due; and provided, further, that no suit shall be brought for an amount less than twenty-five dollars. [Report joint committee, Sen. Jour., 1895, p. 486, No. 113; R. S. Art. 7661.]

The district court has jurisdiction to afford relief by injunction to one whose property is assessed unreasonably and fraudulently by the board of equalization. *Johnson v. Holland*, 17 C. A. 210, 43 S. W. 71.

Suit to collect delinquent taxes, where no foreclosure is involved, should be brought in the court having jurisdiction of the amount. *State v. Thrilling* (Civ. App.), 62 S. W. 788.

In an action to foreclose a tax lien, a plea to the jurisdiction on the ground that the amount involved was below the limit of the district court

held properly overruled. *Grace v. City of Bonham*, 26 C. A. 161, 63 S. W. 158.

Under the amended judiciary article of the constitution the district court had no jurisdiction of an action to enjoin the collection of a tax of \$300. *Delling v. Waddell* (Civ. App.), 64 S. W. 945.

The district court has jurisdiction of a suit for injunction to restrain an assessor from making a certain tax levy, where the amount of the tax to be levied is not stated and is not in controversy. *Lowrance v. Schwab*, 46 C. A. 67, 101 S. W. 840.

Under the amended judiciary article of the Constitution (Article 5, Sec. 16), giving the county court exclusive jurisdiction where the amount in controversy is over \$200 and less than \$500, the district court has not jurisdiction to restrain the collection of taxes in the sum of \$374, notwithstanding the general power of the district courts to issue writs of injunction and mandamus. *Aquilla State Bank v. Knight* (Civ. App.), 126 S. W. 893.

This article was not intended to create any liability for taxes, but only to provide an additional method of collecting taxes from the persons already liable. That is to say that taxes are not due from the person sued within the meaning of this article until there has been a valid assessment against him either as known or unknown owner. *Connell v. State* (Civ. App.), 55 S. W. 980.

No right of action exists for the nonpayment of an ad valorem property tax until assessment has been made as provided by law. *Id.*

Injunction can only be resorted to to restrain the collection of taxes, when there is no adequate legal remedy. *Cole v. Forto*, 155 S. W. 350 (T. C. A.)

Plaintiff cannot avail himself of the plea that excessive property was levied, in a suit to restrain the collection of taxes, *McMahan v. Morgan*, (T. C. A.), 151 S. W. 1123.

A property owner cannot sue to enjoin an excessive levy, when he has not paid the taxes assessed against him or offered to pay. *McMahan v. Morgan*, 151 S. W. 1123.

The justice court and not the district court has jurisdiction of an action under this article to recover taxes in the sum of \$120.77, and the statutory penalty of 10 per cent, since it is an action on a debt, and the amount due is within the jurisdiction of the justice court. *State v. Trilling*, 62 S. W. 788.

A petition in a suit under this article which only alleges that defendant was in possession of the property, does not contain sufficient allegation of ownership, as against a demurrer specifically raising such objection. *State v. Trilling*, 62 S. W. 788.

Persons whose rights are identical and who are affected in the same way by taxes imposed by the same officers, may join in a suit in equity to restrain the collection of taxes, though they have a remedy at law under Sec. 1, ch. 34, Acts Thirty-first Legislature. *Porter v. Langley*, 155 S. W. 1042.

An instruction that the true cash value of a commodity is the amount of cash for which it can be bought or sold in the due course of trade, is not objectionable for failing to make a distinction between the cash market value and the true value of the property. *Porter v. Langley* (T. C. A.), 155 S. W. 1042.

The collection of taxes could not be enjoined in a suit against the tax assessor, tax collector, county judge, and county commissioners, to which the county itself was not a party. *Texas Co. v. Daugherty*, 160 S. W. 129.

423. Limitation Not Available to Delinquent Taxpayer.—No delinquent taxpayer shall have the right to plead in any court or in any manner rely upon any statute of limitation by way of defense against the payment of any taxes due from him or her either to the State or any county, city or State [town]. [R. S. Art. 7662.]

This article is the same as Section 16 of the Act of July 4, 1879, which, it seems, was omitted from the Revised Statutes of 1895, which went into effect September 1, 1895. There was, therefore, no law on the subject from September 1, 1895, to October 9th following, the date of the passage of the above article. See *Hernandez v. City of San Antonio* (Civ. App.), 39 S. W. 1022.

The two-years limitation does not operate against a claim for taxes, where a statute forbidding it was omitted from the revision, but reinstated within the two years. *Abney v. State*, 20 C. A. 101, 47 S. W. 1043.

Statute of limitations cannot be pleaded as a bar against the recovery of delinquent taxes. *Id.*

A tax was imposed by the Legislature, and in the ordinary course of business paid by persons taxed without any question having been made as to its illegality or the irregularity of the collection of that part of it claimed by the county. In a suit to recover back a portion of the tax claimed to have been illegally assessed, held: (1) That the plaintiffs did not have the right to bring their suit at any time within two years to recover back that portion of the tax claimed to be illegal. (2). The tax being voluntarily paid, it was not, under the circumstances, contrary to good conscience for the county to retain it. *Galveston County v. Gorham*, 49 Tex. 279.

Where illegally assessed taxes are paid under protest after seizure, the money paid may be recovered back in a suit promptly brought against the officer before he is required to pay it over. *Hardesty v. Fleming*, 57 Tex. 395.

In an action against a county and the tax collector to recover taxes paid on an alleged illegal valuation of the property, it was error for the court to grant a recovery for the county taxes paid, since such action was a collateral attack on the judgment of the commissioners' court fixing the value of the land. *Texas Land & Cattle Co. v. Hemphill County* (Civ. App.), 61 S. W. 333.

Recovery of illegal costs. See notes under Art. 1827, par. 188.

Conditions precedent. After the entire property of a private corporation had been listed by it for taxation, the county assessor, without authority of law, made a further assessment on the corporation for property that it did not own, and the land of the corporation was advertised by the collector for sale, to satisfy said illegal assessment; thereupon the corporation paid the illegal tax under protest. Five months after payment a claim for the return of the money was presented to the commissioners' court, and in nine months more suit was brought against the county. Held: (1). That under Section 13, Article 8, of the Constitution of 1876, and Section 18 of the Act of August, 1876, regulating the duties of tax collectors, a tax sale of the property of the corporation would have constituted a cloud on its title. (2). The taxes having been paid under protest to prevent the sale and consequent cloud on the title, the payment was so far compulsory as to allow of a recovery back, if sought with reasonable promptness. (3). Expressions of opinion in *Red v. Johnson*, 53 Tex. 284, noted and explained.

(4). The necessity for action was sufficiently immediate and urgent to remove the payment made to the collector from the class of voluntary payments. (5). That an application for relief has been made to the county commissioners' court, and refused, would not bar a recovery back of the taxes illegally paid under protest. The question was not one of valuation, but of an illegal collection of money to relieve against which the county court or board of equalization had no jurisdiction. *Galveston Gas Co. v. County of Galveston*, 54 Tex. 287.

The right to recover back taxes paid under protest exists, although the taxpayer had not appeared before the board of equalization and contested the assessment. *Hardesty v. Fleming*, 57 Tex. 395.

Whether a purchaser of land at tax sale whose title is invalid, but who neither knew, nor by proper diligence could have known, when he purchased, the invalidity of his deed, is entitled to have refunded to him taxes which were a charge upon the land before the entering of a decree canceling the tax deed, *quaere Stewart v. Kemp*, 54 Tex. 248.

CHAPTER XVI.

METHOD OF ASSESSMENT AND COLLECTION OF BACK TAXES ON UNRENDERED LANDS.

(From Chapter 14, Title 126, R. S.)

	Sec.		Sec.
Assessment of Back Taxes on Unrendered Lands	424	Advertisement of Sale and Redemption of Lands by Owner..	433
Comptroller to Prepare List of Unrendered Lands Each Year..	425	How Collector Shall Sell Lands..	434
Comptroller to Forward List of Unrendered Lands to Boards of Equalization	426	Sale May Be Continued by Tax Collector, How	435
The Board of Equalization to Value Such Lands.....	427	Deed of Tax Collector Executed, When and How	436
Duty of Board to Cause Three Rolls to Be Made.....	428	When Collector Shall Execute Deed	437
Duty of Collector to Give Notice or Advertise	429	Effect of Deed by Tax Collector..	438
Duty of Collector to Enforce Collections After Sixty Days..	430	Collector Shall Make Report of Sales	439
Duty of Comptroller to Make Out List of Lands Sold to State, etc.	431	Proceeds of Sale of Lands Paid to Whom	440
Sale of Lands, When and How Made	432	Collections Shall Be Applied, How	441
		Costs Shall Be Deducted by Collector, etc.	442
		Unsold Land to Be Reported to Comptroller	443

424. Assessment of Back Taxes on Unrendered Lands.—In all cases where lands or real estate have not been assessed for taxation for any year since the year one thousand eight hundred and seventy, the same shall be assessed and the taxes thereon collected in the mode prescribed in this chapter. [R. S. Art. 7663.]

425. Comptroller to Prepare List of Unrendered Lands Each Year.—On the first day of July of each year, the Comptroller of Public Accounts shall cause to be prepared a list of all unrendered lands in each county subject to taxation and not assessed, in which shall be specified the name of the original grantee, the abstract number, the number of acres, the year for which such lands were unrendered, and the rate of State and county taxes for such year. [R. S. Art. 7664.]

426. Comptroller to Forward List of Unrendered Lands to Boards of Equalization.—Upon completion of such lists, the Comptroller shall forward the same to the board of equalization of the respective counties, with the verification that the said list is a true and correct statement of all the unrendered land and real estate in.....

county for the year....., as shown by the records of his office. [R. S. Art. 7665.]

427. The Board of Equalization to Value Such Lands.—Upon receipt of such list or lists by the board of equalization of such county, it shall be their duty to value each and every tract of land or parcel of real estate so mentioned and described in the said lists at their true and full value, as near as can be ascertained, for the year it was omitted to have been rendered. [R. S. Art. 7666.]

428. Duty of Board to Cause Three Rolls to Be Made.—When the board of equalization shall have completed the valuation, they shall cause to be made out three separate rolls, in such manner as may be prescribed by the Comptroller; they shall place one in the hands of the collector of taxes, forward one to the Comptroller of the State, and file one in the office of the county clerk for the inspection of the public. [R. S. Art. 7667.]

429. Duty of Collector to Give Notice or Advertise.—Upon receipt of the rolls by the collector of taxes, he shall advertise in some weekly newspaper published in his county, and, if no paper is published in his county, by posting printed circulars in not less than eight public places in his county, for four consecutive weeks, that the rolls for the collection of taxes on unrendered land and real estate have been placed in his hands, and that unless the taxes are paid within sixty days after the date of said notice he will proceed to collect the same as provided by law for the collection of delinquent taxes. [R. S. Art. 7668.]

430. Duty of Collector to Enforce Collections After Sixty Days.—After the expiration of said sixty days, if the taxes on any such lands are not paid, the collector of taxes shall proceed to enforce the collection of said taxes in the mode provided in the preceding chapter for the enforced collection of delinquent taxes; and he shall be entitled to the same fees and penalties as are allowed him for the collection of other delinquent taxes. [R. S. Art. 7669.]

431. Duty of Comptroller to Make Out List of Lands Sold to State, Etc.—It shall be the duty of the Comptroller of Public Accounts, on or before the first day of each year, to make out and forward to the collector of taxes in each county of the State a full and complete list of all real estate situated in said county that has been previously, at tax sales, bid off to the State for taxes assessed in the county where the land is situated, since the thirty-first day of December, 1876, the owners of which have failed to redeem the same within two years from the date of said sale by payment or tender of payment, to the proper officer of double the amount of taxes and costs for which said real estate was bid off

to the State, together with all subsequent taxes that have become due on the same from the date of sale to the last date on which the same could have been redeemed. [R. S. Art. 7670.]

NOTE.—Present procedure in these matters is regulated by provisions of Chapter herein relating exclusively to Delinquent Taxes, to which reference is here made.

432. Sale of Lands, When and How Made.—It shall be the duty of each collector of taxes, within ninety days after receipt of said list, to call to his aid the county surveyor of his county, and, near as may be, ascertain if any lands contained in said list do not in fact exist in said county, or are embraced in other surveys conflicting therewith, and upon which the taxes have been paid; and, after deducting the same from said list, he shall proceed to sell each tract of land therein described, whether belonging to residents or non-residents, for the payment of such sums of money as may be designated on said list as due thereon, together with all costs that may accrue in advertising and selling the same as herein provided. [R. S. Art. 7671.]

433. Advertistment of Sale and Redemption of Lands by Owner.—The collector of taxes shall, prior to the sale of any real estate that has been previously bid off to the State at tax sales, the owners of which have failed to redeem the same, advertise the real estate to be sold in some newspaper published in the county for six successive weeks, if there be such newspaper published therein, otherwise he shall post advertisements of said sale at the court house door and at one public place in each justice's precinct of his county for at least six weeks, giving in said advertisement, whether published or posted, such description of the lands to be sold as shall be given on the Comptroller's list, and stating the time, place and terms of sale, which shall be between legal hours on the first Tuesday of some specified month at the court house door at public outcry, to the highest bidder for cash; provided, that no real estate shall in any case be sold for less than the amount designated by the Comptroller as due thereon, together with all costs of advertisements and sale; and provided, further, that no sales shall be made under the provisions of this chapter until six months after the same goes into effect; and provided, further, that the former owner of any such real estate, his heirs or assigns, may redeem the same at any time prior to the sale thereof, by the payment to the collector of the county in which such real estate is situated, or to the Comptroller, if in an unorganized county, of the amount designated by the Comptroller as due

thereon, with costs of advertisement; and provided, further, that, if it shall at any time appear to the satisfaction of the Comptroller that any land has been sold to the State for taxes which have been paid, or that the sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall, upon the payment of the amount that may be due thereon, cancel such sale; and in all cases he shall deliver to the owner of the land, or his agent, a certificate under seal of his department, setting forth the fact that such land has been redeemed, or that such sale has been canceled, which certificate shall release the interest of the State, and the same may be recorded in the proper county as other conveyances of real estate are recorded. [Acts 1884, R. S. Art. 7672.]

NOTE.—This article also provides for “Certificates of Redemption” and “Certificates of Cancellation” issued by the Comptroller.

434. How Collector Shall Sell Lands.—At the time and place appointed for said sale, the collector of taxes shall offer for sale each separate parcel of the real estate advertised, and shall sell the same to the bidder who will offer the largest amount of money therefor. [Acts 1879, R. S. Art. 7673.]

435. Sale May Be Continued by Tax Collector, How.—If the sale of the real estate advertised as provided herein shall not be completed on the day it is commenced, said sale may be continued for ten consecutive days, from day to day, by announcement of the tax collector to that effect; and the said collector may, if there be on any day a less number than three bidders present, adjourn said sale to the first Tuesday in the following month. [R. S. Art. 7674.]

436. Deed of Tax Collector Executed, When and How.—When a sale has been made of any real estate as herein provided, the collector of taxes, upon payment of the amount bid for the same, shall make, execute and deliver to the purchaser a deed for such real estate, specifying in said deed the cause and date of sale, the number of acres sold, if the same can be ascertained, the name of the person, firm, corporation or company in whose name the land was assessed, and all such descriptive information as may be necessary to identify the property conveyed; provided, that the purchaser may, after payment, as described in this article, ask a delay of sixty days within which to have said real estate surveyed by the county surveyor, said survey to be made at the expense of the purchaser, and, upon a certificate from the collector directed to the surveyor that the person named in the certificate has purchased and paid for the same, not to exceed one dollar for each

survey, to be paid for out of the sale of such survey. [R. S. Art. 7675.]

437. When Collector Shall Execute Deed.—When a survey has been made, as provided in the preceding article, and a copy of the field-notes, certified to as true and correct by the county surveyor, filed with the collector of taxes, the said collector shall thereupon make, execute and deliver to the purchaser a deed to said real estate, which deed shall, in addition to the requisite hereinbefore named, contain the field-notes certified by the county surveyor. [R. S. Art. 7676.]

438. Effect of Deed by Tax Collector.—Deeds made, executed and delivered by collectors of taxes under the authority of this chapter shall be held to vest a good and perfect title to the real estate therein described in the purchaser, and may be impeached only by frauds; provided, that the former owner shall have two years from the date of said deed to redeem the same by paying to the purchaser double the amount paid for said land by the purchaser at such sale, together with all subsequent taxes paid by the purchaser, with eight per cent interest on the amount of such subsequent taxes. [R. S. Art. 7677.]

439. Collector Shall Make Report of Sales.—Within thirty days after sales made under the provisions of this chapter, the collector of taxes shall make a report to the commissioners' court of his county, and also to the Comptroller of Public Accounts, giving in said reports such description of the real estate sold as is given in the Comptroller's list, and stating the amounts due the State, county and collector respectively, and the amount for which said land was sold, and the name of the party to whom each tract was sold. [R. S. Art. 7678.]

440. Proceeds of Sale of Lands Paid to Whom.—Collectors of taxes shall, within sixty days after payments for real estate sold under the provisions of this chapter, after deducting from the proceeds of sale all costs due to them or their predecessors in said office, pay into the county treasury of the county in which said real estate is situated the amount of taxes shown by the Comptroller's list to be due to said county, and the balance of said proceeds shall be paid by him into the treasury of the State within the said sixty days, in such manner as may be directed by the Comptroller of Public Accounts. [R. S. Art. 7679.]

441. Collections Shall Be Applied, How.—Taxes collected by State or county, by sales made under the provisions of this chapter, shall be placed to the credit of the different funds for which originally assessed under the direction respectively of the Comp-

troller of Public Accounts and the commissioners' court of the county in which the sale is made; the balance of the proceeds, after satisfying all taxes, penalties and costs accrued, shall, under the direction of the Comptroller, be placed in the treasury of the State as a special tax sale fund, and be subject to be reclaimed by the owner or owners of the land on proof as required in case of escheated estates. [R. S. Art. 7680.]

442. Costs Shall Be Deducted by Collector, Etc.—The collector of taxes shall be entitled to deduct and retain out of the proceeds of sale of each separate parcel of real estate sold, as hereinbefore provided:

1. Such amount as may be designated in the Comptroller's list as costs due thereon to the collector.

2. If the advertisement of sale is published in a newspaper, such a proportion of the actual amount paid for advertising as the number of acres in such separate parcel sold bears to the whole number of acres advertised; or, if the advertisements are posted, the sum of one dollar.

3. Two dollars for every deed made, executed and delivered under the provisions of this chapter. [R. S. Art. 7681.]

443. Unsold Land to Be Reported to Comptroller.—If, after the expiration of ninety days after the receipt of the collector of taxes of the Comptroller's list, any real estate described in said list shall remain unsold, it shall be the duty of the said collector to make separate reports of such fact to the commissioners' court of his county and the Comptroller of Public Accounts respectively; and the said parcels of real estate shall be embraced in the next list furnished by the Comptroller of Public Accounts to the collector of taxes. [R. S. Art. 7682.]

CHAPTER XVII.

DELINQUENT TAXES.

(From Chapters 15, 16, 17, and 18, Title 128, R. S.)

	SEC.		SEC.
All Land and Improvements Subject to Taxation, What Real Property Includes	444	assessments, When	467
Delinquent Taxes to Remain a Lien on Land	445	Commissioners' Court May Contract for Collection of Delinquent Taxes, When	468
Duty of Commissioners' Court to Cause Lands Delinquent to Be Listed by Tax Collector.....	446	Bulk Assessments Validated, When	469
Delinquent Tax Lists to Be Recorded by County Clerks.....	447	Delinquent Tax Record to Be Published, How	470
Delinquent Tax List to Be Published in What Manner.....	448	Property Listed by Comptroller, When	471
Suits to Foreclose Tax Liens on Delinquent Lands	449	Duty of Assessor to Post Notice..	472
Proceedings in Suits to Foreclose Tax Lien.....	450	Lands Not Rendered to Be Assessed, How	473
Duty of Sheriff to Execute Deeds to Purchasers	451	Duty of Commissioners' Courts When Lists Are Made Up.....	474
Attorneys to Represent State in Suits Against Delinquents.....	452	Supplemental Tax Roll to Be Prepared by Tax Assessor.....	475
Duty of Assessor to List Unpaid Taxes Annually, etc.	453	Fees to Which Assessor Shall Be Entitled	476
Provisions of Law Available to Incorporated Cities and Towns	454	Of Municipal Taxes to Pay Subsidies in Aid of Railroads and Other Internal Improvements, Such Taxes, How Applied.....	477
Lands Exempt from Provisions of This Chapter.....	455	Such Taxes to Be Collected by City Officers	478
Delinquent Owners May Redeem Lands Before Sale.....	456	Bond of the Officer Collecting Such Taxes	479
Owners May Redeem in Two Years by Paying Double.....	457	Such Taxes May Be Paid in What	480
Owners May Redeem from State, When and How.....	458	Such Taxes to Be Paid Over Every Month	481
Proceedings Against Delinquents, Unknown or Nonresident	459	If Insufficient, Additional Levy to Be Made	482
Similar Proceedings May Be Instituted by City or Town.....	460	When New Counties Are Created, etc.	483
Lands to Be Platted and Numbered in Certain Counties.....	461	Transcripts of Unpaid Assessments	484
What Constitutes Evidence of Title to Redeem Land.....	462	Transcripts to Be Verified.....	485
Commissioners' Court May Order List Made of Property Omitted from Tax Rolls, etc.....	463	Compensation of Collector of New County	486
Property Omitted Listed and to Be Assessed, How	464	Compensation to Be Allowed for Transcribing Rolls	487
Such List So Made to Operate as a Lien on Property.....	465	Duties of Tax Collector to Notify All Delinquents	488
Such Omitted Property to Be Advertised	466	How Notices and Statements Shall Be Made Out by Collector	489
Commissioners' Court Authorized and Empowered to Reduce As-		Duty of County and District Attorneys to File Suits.....	490
		Duties Are Mandatory on All Officers	491
		Certain Laws Repealed	492

444. All Land and Improvements Subject to Taxation—What Real Property Includes.—For the purpose of taxation, real property shall include all lands within the State, and all buildings and fixtures thereon and appertaining thereto, except such as are expressly exempted by law. [R. S. Art. 7683, Acts 1895, p. 50; Acts 1897, p. 132.]

See *State v. Downman* (Civ. App.), 134 S. W. 787.

This act provides an additional remedy for the collection of taxes and does not render nugatory Chapter 13, relating to the collection of taxes in general. *Masterson v. State*, 17 C. A. 91, 42 S. W. 1003.

Though a sale has been made by the collector to the State, under Rev. St. 1895, Title 104, c. 4 (reenacted with modifications in Chapter 13 of this title), the lien continues to exist on the land, and may be foreclosed under Acts 1895, p. 50 (amended in 1897 and embodied in this chapter), relating to the collection of delinquent taxes. *Id.*

A personal claim for taxes and foreclosure of lien on land held maintainable. *Central Hotel Co. v. State* (Civ. App.), 117 S. W. 880.

Acts 1895, c. 42, amended in 1897 and embodied in this chapter, did not repeal Arts. 7594-7596, originally enacted in 1879, since the Act of 1895 only sought to regulate the collection of taxes such as had been and were thereafter to be assessed and collected by local officers, who, before the passage of that act, were not empowered to collect any of the taxes, provision for the collection of which was made by Arts. 7587-7604. *Wolffarth v. De Lay* (Civ. App.), 142 S. W. 617.

Acts Twenty-fourth Legislature, c. 42, amended in 1897 and embodied in this chapter, does not repeal Acts Sixteenth Legislature, c. 133 (Arts. 7588-7604), referring to non residents of unorganized counties owning land therein, authorizing the Comptroller to assess and collect such taxes, and pointing out the method to be pursued. *De Lay v. Wolfrath* (Civ. App.), 154 S. W. 1030.

Refusal to consolidate actions under this article and Art. 7700, for the collection of delinquent taxes on separate tracts assessed in separate assessments either to third persons as owners or to unknown owners, brought in the same court on the same day, against one claiming to own all the tracts at the time of the commencement of the actions, is not an abuse of discretion conferred by Art. 2182, authorizing the court, in its discretion, to consolidate actions. *McFaddin v. State* (Civ. App.), 139 S. W. 991.

Act of 1895, Chapter 5a, which allows interest on taxes, is not retroactive, so as to increase the amount of taxes which became due prior to its passage. *Conklin v. City of El Paso*, 44 S. W. 879.

A party whose property has been sold for taxes prior to 1895, in redeeming must conform to the requirements of the Act of 1895. *Conklin v. City of El Paso*, 44 S. W. 879.

Where judgment is rendered foreclosing tax lien, it is proper to make the judgment bear 6 per cent interest. *League v. State*, 57 S. W. 34.

445. Delinquent Taxes to Remain a Lien on Land.—All lands or lots which have been returned delinquent or reported sold to the State, or to any city or town, for taxes due thereon since the first

day of January, A. D. 1885, or which may hereafter be returned delinquent or reported sold to the State, or to any city or town, shall be subject to the provisions of this act; and said taxes shall remain a lien upon the said land, although the owner be unknown, or though it be listed in the name of a person not the actual owner; and though the ownership be changed, the land may be sold under the judgment of the court for all taxes, interest, penalty and costs shown to be due by such assessment for any preceding year. [R. S. Art. 7684.]

It is the assessment made annually by the officers of the State, under and in accordance with the law, which holds a lien upon the land. *State v. Farmer*, 94 Tex. 235, 59 S. W. 542.

It is error to enter judgment for the gross sum due against several owners of different tracts without stating what amount of taxes was adjudged to be a lien on each separate tract. *Borden v. City of Houston*, 62 S. W. 426.

The State can enforce a tax lien on land already bought by it for taxes. *Traylor v. State*, 46 S. W. 81.

A tax lien cannot be defeated on the ground that the land was dedicated to the public use, unless the public claims the land under the dedication. *Traylor v. State*, 19 C. A. 86, 46 S. W. 81.

The State can enforce a tax lien on lands already bought by it for taxes. *Id.*

Where an assessment was void for uncertainty of description, the fact that a subsequent purchaser of the land had knowledge that such taxes were unpaid did not give the State the right to enforce a lien for their nonpayment. *State v. Farmer*, 94 Tex. 232, 59 S. W. 541.

Inadequacy of price held such that purchaser of land could not be protected as an innocent purchaser. *Green v. Robertson*, 30 C. A. 236, 70 S. W. 345.

Purchaser of lands subject to State tax liens held not an innocent purchaser. *Haynes v. State*, 44 C. A. 492, 99 S. W. 405.

That the owner of a lot who bought it subject to taxes, was an innocent purchaser could not be set up as a defense against a suit to enforce the tax lien. *Toepperwein v. City of San Antonio (Civ. App.)*, 124 S. W. 699.

The lien on a lot securing subsequently accruing taxes, which a purchaser assumed, could not be enforced except by a suit against him. *Id.*

A wife and her husband having parted with all their interest in a lot, it was not subject to be administered as a part of her estate, and a tax lien on it could not be enforced through such proceeding. *Id.*

A purchaser of land subject to a lien for taxes and penalties held not personally liable for the taxes and penalties. *City of San Antonio v. Toepperwein*, 104 Tex. 43, 133 S. W. 416, affirming *Toepperwein v. City of San Antonio (Civ. App.)*, 124 S. W. 699.

Where the holder of a vendor's lien on certain land was not a party to a suit by the State against the purchaser for taxes, the legal title remaining in the vendor, a judgment against the purchaser had no adverse effect on the vendor's interest notwithstanding this article. *Lippincott v. Taylor (Civ. App.)*, 135 S. W. 1070.

Where purchasers of school lands have defaulted where county school lands by reason of default in payment by the purchaser have revested in

county, the tax liens thereon have been destroyed. The purchasers remain personally liable for all taxes due thereon prior to forfeiture. Opinion of Attorney General, p. 638, 1914-16.

It would be the duty of the county attorney in event judgment could be collected to institute suit to recover judgment against the delinquent taxpayers. Opinion of Attorney General, p. 638, 1914-16.

Tax laws are not retrospective in so far as the year in which they are authorized is concerned. *Cadena v. State* (T. C. A.), 185 S. W. 367.

A tax collector is without authority to release property from a void tax lien, that being a power vested only in the commissioners' court. *Raley v. Bitter*, (T. C. A.), 857.

A senior chattel mortgage, for the price of personalty takes priority over a junior tax lien, notwithstanding Art. 7627, Vernon Sayles' Stat. 1914, which gives a lien for taxes on property of a delinquent taxpayer. *Salt City Co. v. Padgett*, 186 S. W. 391.

One who voluntarily pays taxes on property in which he has no title or interest, is not subrogated to the tax lien. *North Tex. L. Co. v. First Natl. Bank of Atlanta*, 186 S. W. 258.

A property owner held not entitled to an injunction to prevent a suit, where the tax collector has refused to sue to enforce void tax lien. *Raley v. Bitter*, 170 S. W. 857.

446. Duty of Commissioners' Court to Cause Lands Delinquent to Be Listed by Tax Collector.—It shall be the duty of the commissioners' court of each county in this State immediately upon the taking effect of this chapter to cause to be prepared by the tax collector, at the expense of the county (the compensation for making out the delinquent tax record to be fixed by the commissioners' court), a list of all lands, lots or parts of lots sold to the State for taxes since the first day of January, 1885, and which have not been redeemed, in their respective counties and unorganized counties attached thereto, and to have such lists recorded in books to be called the "Delinquent Tax Record," showing when the lands or lots were reported delinquent or sold to the State for taxes, also the name of the owner at the time of such sale or delinquency, if known, the number of acres, the amount of taxes due when first sold, and the amount of all taxes assessed against the owner thereof and returned delinquent for each year as shown by the records of the tax collector's office; and, in making up the list or lists contemplated by this chapter, corrections and omissions in the description of any real estate embraced in such list or lists shall be made, so that, when the corrections are made and the omissions supplied, the description will be such as is given in the abstracts of all the titled and patented lands in the State of Texas, or, as required in Section 12 of this act [Article 7694 of this chapter], such as may be furnished by the Commissioner of the General Land Office, and it shall be required, in bulk assessments, to apportion to each tract

or lot of land separately, its pro rata share of the entire tax, penalty and cost. The list for each county, when certified to by the county judge, and assessment rolls and books on file in the tax collector's office, shall be prima facie evidence that all the requirements of the law have been complied with by the officers charged with any duty thereunder, as to the regularity of listing, assessing, levying of all the taxes therein mentioned, and reporting as delinquent or sold to the State any real estate whatsoever, and that the amount alleged against said real estate is a true and correct charge; and, in cases in which the description of the property in said list or assessment rolls or books is not sufficient to properly identify the same, and of which property there is a sufficient description in the inventories in the assessor's office, then said inventories shall be admissible as evidence of the description of said property. This delinquent tax record for each county shall be delivered to and preserved by the county clerk in his office; and the commissioners' court shall cause a duplicate of same to be sent to the Comptroller; provided, that, where the records are incomplete in any county, it shall be the duty of the Comptroller to furnish such county with a certified copy of the delinquent list for any year or years. [R. S. Art. 7685.]

NOTE.—Under Sec. 488, this chapter, it is made the duty of the tax collector to compile delinquent tax records.

See *Mote v. Thompson* (Civ. App.), 156 S. W. 1105.

The purpose of this article is to empower the commissioners' court to require the tax collector to prepare the list; but, as such duty is not one of the government functions annexed to the office, the commissioners' court may employ another to do the work. *Stringer v. Franklin County* (Civ. App.), 123 S. W. 1168.

The commissioners' court of a county has no authority, under this article, to allow an individual, as compensation for preparing delinquent tax lists, the right to collect and retain all that portion of the taxes shown on the delinquent lists to belong to the county, since such a contract attempts to transfer the official duty of the tax collector in collecting delinquent taxes, and since it is an effort to barter to private individuals the county sources of revenue. *Id.*

A contract employing an individual to prepare delinquent tax lists, as authorized by this article, in consideration of the right to collect and retain all of the delinquent taxes shown by the delinquent lists to be due to the county, if valid at all, operates as an assignment to the individual of the claims and liens which the county had against the property included in the delinquent lists; and a subsequent attempt by the commissioners' court to rescind after the individual had performed the services is ineffectual, and the county is not liable on account thereof, and if the collector of taxes interferes and asserts his legal right to collect the delinquent taxes, the county is not liable for more than the sum appropriated by it. *Id.*

The fact that the consideration agreed on in a contract employing an

individual to prepare delinquent tax lists, under this article, is in excess of the authority of the commissioners' court, and for that reason unenforceable, does not preclude a recovery of the reasonable value of the services, on the commissioners' court failing to exercise the statutory authority to fix the compensation. *Id.*

The delinquent list alone which the tax collector has made of lands sold to the State for taxes, is not *prima facie* evidence that the requirements of the law have been complied with in regard to assessment, but it is so only when taken in connection with the assessment rolls and other books on file in the tax collector's office. *Rouse v. State* (Civ. App.), 54 S. W. 32.

The list referred to in this article is not enough of itself to make *prima facie* case. *Watkins v. State* (Civ. App.), 61 S. W. 533.

447. Delinquent Tax Lists to Be Recorded by County Clerks.—

On receipt of such delinquent tax record containing a complete list of the lands or lots that have been reported delinquent or sold to the State for taxes for any year or number of years since January 1, 1885, and containing also the data and information mentioned in Article 7685 of this chapter, it shall be the duty of the county clerk of each of the counties of this State, respectively, to certify the same to the commissioners' court for examination and correction, and shall thereafter cause the same to be recorded in a book, which book shall be labeled the "Delinquent Tax Record of.....County." The delinquent tax record shall be arranged numerically as to abstract numbers, and shall be accompanied by an index showing the names of delinquents in alphabetical order. [R. S. Art. 7686.]

448. Delinquent Tax List to Be Published in What Manner.—

Upon the completion of said delinquent tax record by any county in this State, it shall be the duty of the commissioners' court to cause the same to be published in some newspaper published in the county, for three consecutive weeks; but, if no newspaper is published in the county, such list may be published in a newspaper outside of the county, to be designated by the commissioners' court, by contract duly entered into, and a publisher's fee of twenty-five cents shall be taxed against such tract or parcel of land so advertised; which fee, when collected, shall be paid into the county treasury; and the commissioners' court of said county shall not allow for said publication a greater amount than twenty-five cents for each tract of land so advertised; and said publication, and any other publications in a newspaper provided for in this act, may be proved by the affidavit of the printer of the newspaper in which the publication was made, his foreman, or principal clerk, annexed to a copy of the publication, specifying the times when and the paper in which the publication was made; provided, that all corrections made in said record, under this article, be

noted in the minutes of the commissioners' court, and shall be certified by the county clerk to the Comptroller, who shall note the same upon his delinquent tax record; provided, that in the event such delinquent tax record be not published correctly in accordance with the copy furnished such newspaper, then no compensation shall be allowed for such publication. [R. S. Art. 7687.]

See *Mote v. Thompson* (Civ. App.), 156 S. W. 1105.

Provisions of a contract of a county for publishing a delinquent tax list recited, and held not to constitute a claim against the county. *Lillard v. Freestone County*, 23 C. A. 363, 57 S. W. 338.

As the commissioners' court of a county has no power to contract to pay the cost of publication of a notice to nonresident taxpayers, it cannot ratify such a contract when made by the county attorney. *Baldwin v. Travis County*, 40 C. A. 149, 88 S. W. 480.

449. Suit to Foreclose Tax Liens on Delinquent Lands.—Twenty days after the publication of such notice, or as soon thereafter as practicable, the commissioners' court, or the county judge acting for said court, shall file a list of all lands so advertised for taxes due for any year or number of years, the tax on which remains unpaid, with the county clerk of the county in which such lands are located, or if unorganized, then with the county clerk of the county to which said unorganized county may be attached for judicial purposes, and are to be sold under the provisions of this act, for all the taxes, interest, penalty, and costs, and shall cause suit to be filed in the name of the State of Texas, in the district court of said county, or if unorganized, then in the district court of the county to which said unorganized county is attached for judicial purposes, stating therein, by apt reference to lists or schedules annexed thereto, a description of all lands or lots in such county upon which taxes and penalty have remained unpaid for any year or number of years since the first day of January, 1885, and the total amount of such taxes, with interest computed thereon to the time fixed for the sale thereof at the rate of six per cent per annum, and shall pray for judgment for the payment of the several amounts so specified therein, and in default thereof, that such lands be sold to satisfy said judgment for all taxes, interest, penalty and costs, and for such other relief to which the State may be entitled under the law and facts. All suits to enforce the collection of taxes, as provided in this chapter, shall take precedence and have priority over all other suits pending in the district court. The petition in such suits shall be signed by the attorney bringing the suit, and shall be verified by the affidavit of said attorney, or the county judge, to the effect that the averments contained in

said petition are true to the best knowledge and belief of affiant; and the pleadings of the defendant, except those of law, shall be verified by like affidavit of the defendant, his agent or attorney. The county collector, county clerk and county assessor shall furnish all affidavits, certified copies of the records of their respective offices, and such other evidence as may be in their possession by virtue of such office, as may be applied for by the county attorney. [R. S. Art. 7688.]

The rule that, to authorize a sale for taxes, it is necessary that the law regarding assessments must be strictly complied with and that the omission to give the number of the certificate or survey in the description, is, in the absence of some reasonable excuse, fatal, should be relaxed in cases of suits for taxes and foreclosure of liens, and hence in such a suit the description in the assessment was sufficient where the abstract and certificate numbers, the name of the original grantee, the number of acres, and the value were all properly given, though the survey number was omitted. *State v. Adams* (Civ. App.), 126 S. W. 674.

The right to sue for delinquent taxes and to foreclose a lien therefor, is wholly statutory, and the statute expressly removes from the jurisdiction of the district court specified cases. *Mote v. Thompson* (Civ. App.), 156 S. W. 1105.

See, also, notes under Art. 1827, par. 62, 188.

The petition in a tax collection suit must conform to the law in every substantial requirement, or it will entirely fail to have any efficiency. It is the first step taken towards collecting delinquent taxes. *Young v. Jackson*, 50 C. A. 351, 110 S. W. 77.

It is error to render judgment by default on an amended petition not sworn to although the original petition was verified. *Cockrell v. State*, 22 C. A. 568, 55 S. W. 579.

This article, so far as it required a verification of the petition, is directory and not mandatory, and a failure to verify the petition is not a jurisdictional defeat. *Todd v. State* (Civ. App.), 134 S. W. 764.

A taxpayer is entitled to show want of authority to levy a tax as a defense to an action to recover it. *Conklin v. City of El Paso* (Civ. App.), 44 S. W. 879.

In a suit to recover taxes, fraud of board of equalization in making assessment may be pleaded. *Mann v. State*, 18 C. A. 701, 46 S. W. 652.

Answer alleging fraud in assessment, and seeking to have the same set aside, held proper. *Id.*

If answer was not sworn to, or was defectively sworn to, objection on that account should have been specially made, when the defect could have been amended. The question could not be properly raised upon objection to the evidence. *State v. Quillen* (Civ. App.), 115 S. W. 661.

In a suit by the State alone, recovery can be had for the county taxes also. The remedy by foreclosure is applicable as well to county as to State taxes. *Masterson v. State*, 17 C. A. 91, 42 S. W. 1003.

Where judgment is rendered foreclosing State's tax lien it is proper to make the judgment bear six per cent interest. *League v. State*, 93 Tex. 553, 57 S. W. 34, 35.

See opinion at end of chapter relating to interest on taxes.

Taxes due to counties can be collected in a suit in the name of the State alone. *Masterson v. State*, 42 S. W. 1003.

Statute of limitation can not be pleaded as a bar against the recovery of delinquent taxes. *Abney v. State*, 47 S. W. 1043.

It is not necessary to allege in the petition the amount of interest and penalties due, as they are fixed by law. *Watkins v. State*, 61 S. W. 532.

Where twenty-two parcels of land were assessed to unknown owners as separate tracts, and the State brought twenty-two suits to enforce the collection of the taxes, it was not error to refuse to consolidate them. *Watkins v. State*, 61 S. W. 532.

It is error to render judgment by default upon an amended petition not sworn to, although the original petition was verified. *Cockrell v. State*, 55 S. W. 579.

Judgment for delinquent taxes which includes a year for which no amount was claimed or due is excessive and invalid. *Coleman v. Crowdus* (T. C. A.), 178 S. W. 585.

When a petition in suit to foreclose tax lien does not pray for judgment for a certain year, "judgment for plaintiff" as prayed will not be accepted on appeal to sustain sale, in place of former judgment, invalid because it includes taxes for such year when land was not assessed. *Coleman v. Crowdus* (T. C. A.), 178 S. W. 585.

Under Article 5232, Sayles' Statutes, 1897, which provides that on affidavit of the State's attorney that the owners are unknown to him, the parties in a suit for delinquent taxes shall be cited by publication, citation by publication is not authorized unless such affidavit is filed and judgment without it is subject to collateral attack. *Mote v. Thompson* (T. C. A.), 156 S. W. 1105.)

450. Proceedings in Suits to Foreclose Tax Lien.—The proper persons shall be made parties defendant in such suits, and shall be served with process and other proceedings had therein as provided by law for suits of like character in the district courts of this State; and, in case of foreclosure, an order of sale shall issue, and the land sold thereunder as in other cases of foreclosure; but, if the defendant or his attorney shall, at any time before the sale, file with the sheriff or other officer in whose hands any such order of sale shall be placed, a written request that the property described therein shall be divided and sold in less tracts than the whole, together with a description of such subdivisions, then such officer shall sell the lands in said subdivisions as the defendant may request, and in such case shall only sell as many subdivisions, as near as may be, to satisfy the judgment, interest, penalties and costs; and, after the payment of the taxes, interest, penalties and costs adjudged against it, the remainder of the purchase price, if any, shall be paid by the sheriff to the clerk of the court out of which said execution or other final process issued, to be retained by him subject to the order of the court for the period of two

years, after which time the court may order the same to be paid to the State Treasurer, who shall hold same in trust to be paid to the owner against whom said taxes were assessed; provided, any one claiming the same shall make proof of his claim to the satisfaction of the State Treasurer, within ten years after the sale of said lands or lots, after which the same shall be governed by the law regulating escheats; provided, that no suit shall be brought to enforce such lien upon any land that a sufficient description to identify the same can not first be had; and provided, further, that, if there shall be no bidder for such land, that the county attorney shall bid said property off to the State for the amount of all taxes, penalties, interest and costs adjudged against said property; and, in the absence of the county attorney, the sheriff is authorized to bid to the State, when there are no bidders, and it shall be the duty of the district clerk to immediately make report of such sale in duplicate, one to the Comptroller of Public Accounts, and one to the commissioners' court, on blanks to be prescribed and furnished by the Comptroller. And, in all such cases where the property is bid off to the State, it shall be the duty of the sheriff to make and execute deeds to the State, using forms to be prescribed and furnished by the Comptroller, showing in each case, the amount of taxes, interest, penalty and costs for which sold, and the clerk's fee for recording deeds as hereinafter provided. He shall cause such deeds to be recorded in the records of deeds, by the county clerk of his county, and when so recorded shall forward the same to the Comptroller; and the county clerk shall be entitled to a fee of one dollar for recording each such deed to the State, to be taxed as other costs. And, when lands thus sold to the State shall be redeemed, it shall be the duty of the collector of taxes, when any such redemption is made, to make the proper distribution of the moneys received by him in such redemption, paying to each officer the amount of costs found to be due, and to the State and county the taxes, interest and penalties due each respectively. [R. S. Art. 7689.]

See *Woods v. Moore*, 185 S. W. 623.

The law governing judgments of foreclosure in other cases is found in Article 2000, and judgments must provide that an order of sale issue, etc. *Houssels v. Taylor*, 24 Civ. App. 72, 58 S. W. 192.

This article requires sales under tax liens to be made as in other cases of foreclosure. Formerly such sales were made as under execution and no notice to the defendant in the suit was required other than that obtained from posted notices. In 1895 the statute was amended so as to require further notice to be given "by delivering to the defendant in execution" a copy of the posted notice. By an Act of 1903 the manner of giving notice

was changed by requiring publication thereof in a newspaper and also a written notice to the defendant or his attorney of such sale either in person or by mail. A notice properly mailed is sufficient even though the defendant does not receive it. *Rogers v. Moore*, 100 Tex. 220, 97 S. W. 685.

The wife need not be made a party in foreclosing a tax lien on a homestead. *Bean v. City of Brownwood* (Civ. App.), 43 S. W. 1036.

In an action to foreclose a tax lien upon a homestead, the wife is presumed to have only a homestead right. *Id.*

The wife is not a necessary party in foreclosing a lien for taxes on her husband's homestead. *City of San Antonio v. Berry*, 92 Tex. 319, 48 S. W. 496, affirming *Berry v. City of San Antonio* (Civ. App.), 46 S. W. 273.

Where defendants filed answers in a suit for taxes against unknown owners, and judgment was entered against unknown owners, an appeal by defendants will not be dismissed on the ground that they were not parties to the judgment. *Watkins v. State* (Civ. App.), 61 S. W. 532.

That suits for taxes were brought against unknown owners held not prejudicial to defendants, where they appeared and filed answers. *Id.*

Where the owner of land is in the actual occupation thereof, the State cannot deprive him of title by a suit for delinquent taxes against an unknown owner and without actual notice to him. *Hollywood v. Welhausen*, 28 C. A. 541, 68 S. W. 329.

In a suit under the delinquent tax act, all parties claiming any interest in the property must be made parties and be served with citation. *Ball v. Carroll*, 42 C. A. 323, 92 S. W. 1023.

Judgment for sale of land for taxes held not subject to collateral attack, in trespass to try title, on account of insufficiency of citation. *Kenson v. Gage*, 34 C. A. 547, 79 S. W. 605.

The citation served by publication in an action for delinquent State and county taxes may be addressed directly to defendants, and it need not be addressed to any officer nor require any officer to make return thereof. *Gibbs v. Scales* (Civ. App.), 118 S. W. 188.

There can be no citation to an estate, as an estate, to appear to defend an action to foreclose a lien for taxes. *Perry v. Whiting*, 56 C. A. 550, 121 S. W. 903.

Introduction of tax roll showing an assessment of a mineral interest severed from the ownership of the surface of the land, held to establish a prima facie case for the State, in an action to recover taxes. *State v. Downman* (Civ. App.), 134 S. W. 787.

In an action to recover taxes on a mineral interest in certain land, evidence held insufficient to warrant a finding that an assessment of the surface included the mineral interest. *Id.*

In an action to foreclose a tax lien, evidence held to show that the 94½ acres, against which a foreclosure was sought, was a part of the 183 acres shown by a delinquent list; and hence the list was properly received in evidence. *McMahan v. State* (Civ. App.), 147 S. W. 714.

A judgment directing sale of several tracts of land to pay taxes in gross does not violate Article 8, Section 13, State Constitution, as this article gives the owner the option to require the sheriff to sell each tract separately. *Masterson v. State*, 17 C. A. 91, 42 S. W. 1003.

An execution sale of several tracts of land in gross for taxes for which a judgment of foreclosure in gross has been rendered is not void. *Ryon v. Davis*, 32 C. A. 500, 75 S. W. 59.

Under this article and Arts. 6842, 7698, a judgment in proceedings to sell land for nonpayment of taxes held void, as residence of owner might have been ascertained from the records, and process was served as upon an unknown owner. *Wren v. Scales*, 55 C. A. 62, 119 S. W. 879.

The requirement that land in towns and cities should be sold by lots is directory, and does not limit the power of the court to order the sale in the mode deemed most conducive to the interest of the parties. *Oppenheimer v. Reed*, 11 C. A. 367, 32 S. W. 325.

Issuing of two orders of sale on only one judgment held proper. *Bean v. City of Brownwood* (Civ. App.), 43 S. W. 1036.

The pasting of paper over printed words of an order of sale was immaterial. *Id.*

Sheriff's failure to notify nonresident owner or attorney of the tax sale held, under facts, not to affect sale's validity. *Crosby v. Bonnowsky*, 29 C. A. 455, 69 S. W. 212.

Contention that property owners had not sufficient notice of sale for taxes held without merit. *Ross v. Drouilhet*, 34 C. A. 327, 80 S. W. 241.

Where the judgment and order of sale are valid and there is no fraud, a sale by the sheriff under execution will be upheld where he mailed notice to the judgment debtor, though he did not receive it. *Rogers v. Moore*, (Civ. App.), 94 S. W. 113.

In suit to set aside tax judgment and sale, held, that city attorney was not bound under agreement with plaintiffs to delay sale under judgment longer than he had. *Ross v. Drouilhet*, 34 C. A. 327, 80 S. W. 241.

A county attorney who conducted the suit for taxes and obtains judgment of foreclosure can buy the land for himself at foreclosure sale. The statute requires the land to be bid in for the State only when there are no bidders. *Gibbs v. Scales* (Civ. App.), 118 S. W. 190.

Where the proceeds of a tax sale are insufficient to pay both taxes and costs, the entire costs made by either party must be first paid. *City of San Antonio v. Campbell* (Civ. App.), 56 S. W. 130.

Where there was a surplus on a sale of land for taxes, purchasers were not entitled thereto, nor were they responsible for the sheriff's misappropriation thereof. *Moore v. Rogers*, 100 Tex. 361, 99 S. W. 1023.

A petition by the State to recover taxes assessed against the "unknown owner" of certain described lands, in a suit against the owners, and to foreclose the State's lien thereon, which failed to show that defendants ever owned or claimed any interest in such land, is fatally defective. *State v. Mantooth*, 49 S. W. 683.

A judgment for taxes against the unknown heirs of a former owner is void as to the owner under grant from the deceased, and who had no notice of the suit. *Green v. Robertson*, 70 S. W. 345.

A judgment directing sale of several tracts of land to pay taxes in gross does not violate Article 8, Section 15, of the State Constitution, as Article 5232g gives the owner the right to require the sheriff to sell each tract separately. *Masterson v. State*, 42 S. W. 1003.

In a foreclosure suit for taxes on a homestead the wife is not a necessary party. *Berry v. City of San Antonio*, 46 S. W. 273.

Where the owner of the land is in actual possession thereof, he can not be deprived of title by a suit for delinquent taxes against an unknown owner. *Hollywood v. Wellhausen*, 68 S. W. 329.

We advise you that when land becomes delinquent it can be sold with-

out reference to the vendor's lien notes against it. The vendor's lien notes are simply an equity in the land and the land is subject to the taxes and can be sold for taxes without reference to the vendor's lien notes. Ruling of Attorney General, p. 664, 1912-14.

You desire to know if all the lots and blocks and parcels of land located in the same town belonging to the same person should be sold collectively? Art. 7689 answers this question and allows any person interested in it to appear and have the property separated and only so much sold as is necessary to pay the taxes on the whole. Ruling of Attorney General, p. 664, 1912-14.

The fee of \$1.00 allowed the sheriff for selling and making a deed to purchaser of land under a judgment for taxes is in lieu of commissions allowed to sheriff for the sale of land under the general fee bill and is not intended to be a limitation upon the amount of costs a sheriff may be entitled to in a tax suit, but the sheriff is allowed such other fees as he may be entitled to under the general fee bill as in other suits. Article 7691, R. S. 1911. Opinion Attorney General, p. 639, 1914-16.

This Department is of opinion that the proper construction to be placed upon the foregoing provisions is, that where suit to collect delinquent taxes has been filed and prosecuted to judgment, the sheriff would be entitled to receive for his services the fees provided by law for such services in connection with other suits in the district court to be taxed as costs in the case, and that if there is a foreclosure and he makes deed to the State or to a private purchaser, he would in addition be entitled to "a fee of \$1.00 for selling and making deed thereto to each purchaser of land that he sells under judgment for taxes" which fee also is to be taxed as costs. The Department is of opinion however, that if the taxes, penalty, interest and costs are paid during the pendency of the suit, and there is no sale and the sheriff is not called upon to make deed to the land, the sheriff shall as compensation for all of his services in connection with the tax suit receive "only \$1.00 in each case." Ruling of Attorney General, p. 652, 1914-16.

A party claiming by limitation is not a necessary party unless his title has been fully perfected before the bringing of suit against unknown owners. *Wood v. Moore* (T. C. A.), 185 S. W. 623.

In sale of property in tax suits no fee bill can be lawfully made except as provided in Art. 7691 R. S. setting out what fees the sheriff and district clerk are entitled to. *Bonougli v. Brown*, (T. C. A.) 185 S. W. 47.

If a valid judgment is rendered in a suit to foreclose a tax lien under Art. 5232g R. S., in the absence of necessary parties, those only who are actual parties are bound; the statutes adding nothing to the general rule as to parties in litigation. *Adams v. West Lumber Co.*, (T. C. A.) 162 S. W. 974.

A suit to collect delinquent taxes is an action in rem against the property; a judgment to foreclose a tax lien is good against parties in interest joined in the suit, and parties not joined are not bound by the judgment. *Adams v. West Lumber Co.*, (T. C. A.) 162 S. W. 974.

Art. 7691 R. S. allows in a tax sale foreclosure a fee of \$3 to the county attorney; \$1.50 to the district clerk and \$1 to the county clerk, and a sale under a judgment which includes an excess of \$14.71 for these items is void. *Hill & Johns v. Lofton*, (T. C. A.) 165 S. W. 67.

A tax deed is no evidence of title, it being necessary to show a legal

levy of taxes for which the sale is made, or the sale is invalid. *Purington v. Broughton*, (T. C. A.) 158 S. W. 227.

Under statutes which excludes jurisdiction on lands already assessed and on which taxes are paid in a county different from that in which it is located an execution sale on land in a county, on which the taxes have been paid in another, is void. *Hill & Jahns v. Lofton*, 165 S. W. 67.

Unless evidence is offered to show that the law has been complied with in regard to the sale for taxes so that a valid conveyance can be made, a tax deed is no evidence of title. *Zarate v. Villareal* (T. C. A.), 155 S. W. 328.

A void judgment for delinquent taxes cannot become valid by the running of the statute of limitations. *Mote v. Thompson* (T. C. A.), 156 S. W. 1105.

In a tax suit, service of citation made on the wife who does not give the same or call it to the attention of her husband, is not service on the husband, and the court has no jurisdiction over him, especially when the time named for his appearance is an impossible date. *Rowland v. Klepper*, (T. C. A.) 189 S. W. 1033.

A motion to set aside and vacate a judgment in a suit brought by the owner of land sold for taxes against the purchaser at tax sale and asking for a decree for the land is not a collateral attack on the judgment for taxes and for sale. *Rowland v. Klepper* (T. C. A.), 189 S. W. 1033.

The right to sue and foreclose lien for delinquent taxes is statutory, and the statute expressly takes specific cases from the jurisdiction of the District Court. *Mote v. Thompson*, 156 S. W. 1105.

Where the statute provides that a suit for sale for taxes shall be brought in the district court of the county where land is situated, a sale of land in another county from the one in which suit was brought and taxes alleged to be due is void. *Hill & Jahns v. Lofton*, 165 S. W. 67, (T. C. A.)

Facts held sufficient to show that certain lots belonging to an investment company could not be sold, under the statute, as belonging to an unknown owner. *Harvey v. Provident Inv. Co.*, 156 S. W. 1127.

Under Article 7692 R. S. as to what shall be prima facie evidence that the law has been complied, in an action to collect a tax, the plaintiff need not allege or show the order of the commissioners' court making the levy. *American Lumber Co. v. State*, (T. C. A.) 165 S. W. 467.

Where defendant in an action for delinquent taxes makes his vendors parties, and asks for judgment against them, if plaintiff recovers judgment for taxes, penalties and costs, judgment against vendor for taxes, penalties and interest was proper. *Gordon v. State*, 151 S. W. 867.

451. Duty of Sheriff to Execute Deeds to Purchasers.—In all cases in which lands have been sold, or may be sold, for default in the payment of taxes, it shall be lawful for the sheriff selling the same, or any of his successors in office, to make a deed or deeds to the purchaser or to any other person to whom the purchaser may direct the deed to be made, and any such deed shall be held in any court of law or equity in this State to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud. [R. S. Art. 7690.]

See *Wright v. Giles* (Civ. App.), 129 S. W. 1163.

To establish a tax deed given 45 years before as evidence, it was unnecessary to show compliance with the prerequisites to a sale since under *Sayles' Early Laws of Texas*, Art. 2865, p. 484, the deed is *prima facie* evidence of such compliance. *Wright v. Giles* (Civ. App.), 129 S. W. 1163.

Where plaintiff claimed title to land, and defendant by answer in chancery claimed title to land by sheriff's tax deed, he could not object to decree on ground that plaintiff had not shown title. *Murphy v. Williams* (Civ. App.), 56 S. W. 695.

Without an order of sale the sheriff can make no valid sale, and his deed "vests a good and perfect title" only when he sells by virtue of an order of sale. *Houssels v. Taylor*, 24 C. A. 72, 58 S. W. 192.

A purchaser at a tax sale held a tenant in common with certain owners of undivided interests in the land, entitled only to a lien against the interests for taxes paid by him. *Niday v. Cochran*, 42 C. A. 292, 93 S. W. 1027.

This article does not alter the rights of the party purchasing at tax sale or vest in him any title other than that of the unknown owner, as was the case under the former law. The constitutional provision declaring that a tax deed shall be held to vest good and perfect title in the purchaser does not in fact vest in the purchaser ownership of the land as against those not claiming under the unknown owner but adversely to him, and the provisions of this article do not alter the rule and cut off such adverse claimants. *Patton v. Minor* (Civ. App.), 117 S. W. 922.

A claimant of lands under a sale for delinquent taxes held bound to prove that the taxes were duly assessed, were a charge on the land, and that the successive steps were taken which led to a lawful sale, at which he or his assignor became the purchaser. *Lamberida v. Barnum* (Civ. App.), 90 S. W. 698.

A sale of real estate for State and county taxes passes no title, in the absence of proof of a levy of the county tax. *Woody v. Strong*, 54 C. A. 256, 100 S. W. 801.

Recitals in tax deeds held insufficient to establish performance of prerequisites of tax sale. *Keenan v. Slaughter*, 49 C. A. 180, 108 S. W. 703.

Without order of sale sheriff can make no valid sale, and his deed "vests good and perfect title" only when he sells by virtue of an order of sale. *Houssels v. Taylor*, 58 S. W. 192.

That a tax deed may be used as evidence of title, the authority of the maker of the deed must be shown by proving that he has complied with the law which confers authority upon him. *O'Hanlon v. Morrison* (T. C. A.), 187 S. W. 692.

In a trespass to try title suit to land sold in a proceedings against unknown owners, a question for the jury to say whether the county attorney had exercised proper diligence in ascertaining the true owners before such sale. *Hume v. Carpenter*, (T. C. A.), 188 S. W. 707.

Where the county attorney failed to exercise reasonable diligence in ascertaining the true owner of land, before tax sale against unknown owner, tax proceeding and sale void under Art. 7696. *Vernon Sayle's Statutes*. *Hume v. Carpenter* (T. C. A.), 188 S. W. 707.

Because the sheriff and district clerk retain unlawful fees, thereby making the levy for taxes excessive, does not render the sale null and void under Art. 7689, R. S. *Bonough v. Brown* (T. C. A.), 185 S. W. 47.

Where the sheriff and district clerk have retained more than their legal

fee from a tax sale, the title of the purchaser at such sale cannot *attack in trespass* to try title by third party claiming under the owner. R. S. Art. 7689 R. S. Bonougli v. Brown (T. C. A.), 185 S. W. 47.

In trespass to try title by a purchaser from buyer at tax sale, the sheriff's deed in tax suit, which was against unknown owners, were admissible in evidence against defendants, not parties to the tax suit, as muniments of title to establish that grantee had acquired title of the unknown owner. Woods v. Moore, 185 S. W. 623. (T. C. A.)

One who pays only \$40, a tax sale, for property worth \$3000 is not a purchaser in good faith, the price being grossly inadequate. Rowland v. Klepper (T. C. A.), 189 S. W. 1033.

In a suit by the owner of land, sold for taxes, the purchaser at said tax sale, who had paid the taxes which owner had failed to pay, is entitled to be reimbursed in suit by owner to vacate and set aside the sale. Rowland v. Klepper (T. C. A.), 189 S. W. 1033.

452. Attorneys to Represent State in Suits Against Delinquents.

—The county attorney, or district attorney in counties where there is no county attorney, shall represent the State and county in all suits against delinquent taxpayers that are provided for in this act, and all sums collected shall be paid immediately to the county collector. In no case shall the compensation for said county attorney be greater than three dollars for the first tract in one suit, and one dollar for each additional tract, if more than one tract is embraced in same suit to recover taxes, interest, penalty and costs; provided, that those county attorneys, who may have heretofore or may hereafter institute said suits, shall be entitled to an equal division with their successors in office of the fees allowed herein on all suits instituted by them, where the judgment has not been obtained prior to the vacation of their office. The collector of taxes, for preparing the delinquent list and separating the property previously sold to the State from that reported to be sold as delinquent for the preceding year, and certifying the same to the commissioners' court shall be entitled to a fee of one dollar for each correct assessment of the land to be sold, said fee to be taxed as costs against the delinquent. The sheriff shall be entitled to a fee of one dollar for selling and making deed thereto to each purchaser of land that he sells under judgment for taxes, which fee shall be taxed as costs of suit; and the district clerk shall be entitled to a fee of one dollar and fifty cents in each case, to be taxed as costs of suit. And the county clerk for making out and recording the data of each delinquent assessment, and for certifying the same to the commissioners' court for correction, and for noting the same in the minutes of the commissioners' court, and for certifying the same, with corrections, to the Comptroller, and noting the same on his delinquent tax record, shall receive the sum of one

dollar, to be taxed as costs against the land in each suit; provided, that in no case shall the State or county be liable for such fees, but in each case they shall be taxed as costs against the land to be sold under judgment for taxes and paid out of the proceeds of sale of same after the taxes, penalty and interest due thereon to the State are paid; provided, that where two or more unimproved city or town lots belonging to the same person and situated in the same city or town shall all be included in the same suit and costs, except those of advertising, which shall be twenty-five cents for every ten lots, or any number less than ten, taxed against them collectively just as if they were one tract or lot; and provided, further, that where suits have been brought by the State against delinquents to recover tax due by them to the State and county, the said delinquent may pay the amount of the tax, interest, penalties and all accrued costs to the county collector during the pendency of such suit; and the county attorney shall receive as compensation therefor two dollars for the first tract and one dollar for each additional tract embraced in said suit; and the district clerk shall receive only one dollar, and the sheriff only one dollar in each case; but these fees shall be in lieu of the fees provided for such officers where suits are brought as hereinbefore provided. [R. S. Art. 7691.]

The fee allowed to the officers named in this article can be charged for each year that the taxes are delinquent. *State v. Wolfe* (Civ. App.), 51 S. W. 657.

Under this article officers are entitled to a fee for each tract assessed, though the delinquent taxpayer has listed several tracts in one rendition. *Houston Oil Co. of Texas v. State* (Civ. App.), 141 S. W. 805.

The right of county collectors and county clerks to fees for preparing delinquent tax lists, etc., does not depend on their having been called on by the commissioners' court to perform that service. *Id.*

If the suit is commenced by one county attorney and his term expires before judgment is rendered, and another is elected his successor, during whose term judgment is rendered, the attorney's fee should be divided equally between the attorney who filed the suit and the one in office when judgment was rendered. *Swayne v. Terrell*, 20 C. A. 31, 48 S. W. 218.

Where unimproved lots are included in one suit for taxes thereon, they are to be treated as one lot in taxing costs, and not as separate lots and costs taxed for each lot. *Raht v. State*, 48 C. A. 106, 106 S. W. 900.

Under this article the costs provided for would be assessed in the same manner where a delinquent taxpayer paid his taxes without a suit therefor as where a suit had been instituted to collect them. *Tyler & Knudson v. Tom* (Civ. App.), 132 S. W. 850.

In an action by a delinquent taxpayer to recover costs collected upon payment of the taxes, upon the theory that but one charge should have been made by each officer performing services enumerated in the statute for all the lots collectively, instead of for each one separately, where plain-

tiff alleged that a certain sum was the highest sum collected on any one lot and offered to allow defendants a credit for that amount, and alleged that the lots were all owned by plaintiff and were unimproved and all situated in the same town, and alleged the sum total paid the collector and the difference between that sum and the amount averred as the highest sum collected, on any one lot, as the amounts sued for, the petition was sufficient, though neither the costs alleged to have been wrongfully collected, nor those which defendants had lawful authority to collect, were itemized, nor the names of officers other than the tax collector for whom costs were collected were alleged, nor the amount tendered by plaintiff to the tax collector, nor that the amount legally due was tendered. *Id.*

Under the statute, where delinquent taxes were owing on several lots owned by the same person, unimproved and situated in the same town, the lots should be grouped into one group and the costs, upon payment, taxed against them collectively, limiting each officer performing a service mentioned in the statute to one charge for the entire group; and where the lots had been purchased in four groups from four different persons, if any of the costs are legally taxable against the former owner, the rule for taxing the costs against all the lots collectively would apply to the group of lots purchased from such person, and such costs should be taxed against the group as a whole. *Id.*

Delinquent tax lists may be published in a newspaper of the county published outside the district. Ruling Attorney General, p. 654, 1914-16.

In action for collection of taxes, a petition is insufficient which fails to allege that collection has been attempted or threatened by a levy. The petition should set out the amount in controversy, to show the court has jurisdiction. *Marion Co. v. Perkins Bros. (T. C. A.), 171 S. W. 789.*

453. Duty of Assessor to List Unpaid Taxes Annually, etc.—If any person shall fail or refuse to pay the taxes imposed upon him or his property by law until the thirty-first day of January next succeeding the return of the assessment rolls of the county to the Comptroller, a penalty of ten per cent on the entire amount of such taxes shall accrue; which penalty, when collected, shall be paid proportionately to the State and county; and the collector of taxes shall, by virtue of his tax rolls, seize and levy upon and sell so much personal property belonging to such person as may be sufficient to pay his taxes, together with the penalty above provided, interest and all costs accruing thereon. If no personal property be found for seizure and sale, as above provided, the collector shall, on the thirty-first day of March of each year for which the State and county taxes, for the preceding year only, remain unpaid, make up a list of the lands and lots on which the taxes for such preceding year are delinquent, charging against the same all taxes and penalties assessed against the owner thereof. Said list shall be made in triplicate and shall be presented to the commissioners' court for examination and correction of any errors that may appear; and, when so examined and corrected by the commissioners'

court, such lists in triplicate shall be approved by said court, and one copy thereof shall be filed with the county clerk, and one copy retained and preserved by the collector, and one copy forwarded to the Comptroller with his annual settlement reports. When such list of lands and lots, delinquent for the preceding year only, is corrected, as provided for in this article, then such list shall be immediately advertised, as provided for in Section 5 of this act [Article 7687 of this chapter], and, after such advertisement, suit shall be instituted against delinquents for all taxes and penalties due, in the district court as above provided; and such list, as furnished by the tax collector, and corrected by the commissioners' court, and the assessment rolls or books on file in the collector's office, or either said list or assessment rolls or books, shall be prima facie evidence that all the requirements of the law have been complied with by the officers or courts charged with any duty thereunder as to the regularity of listing, assessing, levying all taxes therein mentioned, and reporting as delinquent any real estate whatsoever, and that the amount alleged against said real estate is a true and correct charge; and, in cases in which the description of the real estate in said list or assessment rolls or books is not sufficient to identify the same, and of which property there is a sufficient description in the inventories of the assessor's office, then said inventories shall be admissible as evidence of the description of said property. In the counties where the delinquent tax record for former years has not been furnished, as provided for in Article 7685, the collector of taxes shall also at the same time, make in triplicate a list of all lands and lots that have been previously sold to the State for taxes of former years, which have not been redeemed and on which the taxes are delinquent for the preceding year, and shall present the same to the commissioners' court for examination and correction of any error that may appear; and, when so examined and corrected by the commissioners' court, such lists, in triplicate, shall be approved by said court, and one copy thereof shall be filed with the county clerk, one retained and preserved by the collector, and one copy forwarded to the Comptroller with his annual settlement reports. [R. S. Art. 7692.]

See *Stringer v. Franklin County* (Civ. App.), 123 S. W. 1168; *Mote v. Thompson*, 156, S. W. 1105.

The provision as to the tax collection on March 31st of each year, making a list of delinquent taxes has no reference whatever to the time when taxes are delinquent. The state and county taxes on land for 1901 are delinquent in March 1902, if not paid before that time. *Clark v. Elmen-dorf* (Civ. App.), 78 S. W. 539.

The fact that this act allows the judgment to include costs and penal-

ties does not violate the fourteenth amendment to the constitution of the United States, securing to every citizen equality before the law. The act applies equally to all citizens. *Masterson v. State*, 17 C. A. 91, 42 S. W. 1003.

The list referred to in this article is not the one dealt with in Art. 7685. *Watkins v. State* (Civ. App.), 61 S. W. 533.

Proceedings can be had to enforce the collection of delinquent taxes even before the Comptroller has prepared the delinquent tax record. *Masterson v. State*, 17 C. A. 91, 42 S. W. 1003.

A sale in gross of different tracts of land for the payment of delinquent taxes and penalties is valid under Article 8, Section 15, State Constitution. *Masterson v. State*, 17 C. A. 91, 42 S. W. 1003.

Taxpayer failing to pay legal portion of taxes assessed held liable to the interest and penalties allowed by statute. *State v. Fulmore* (Civ. App.), 71 S. W. 418.

A national bank, tendering payment of taxes legally due from it before the time fixed for the accrual of penalty, held not liable for the penalty for non-payment of taxes, in an action to recover an amount exceeding that which was legally due. *First Nat. Bank v. City of Lampasas*, 33 C. A. 530, 78 S. W. 42.

Under this article the right of fees for preparing delinquent tax lists, etc., prescribed by Art. 7691, does not depend on their having been called on by the commissioners' court to perform the services for which they claim compensation. *Houston Oil Co. of Texas v. State* (Civ. App.), 141 S. W. 805.

Under this article taxes are delinquent on February 1st of each year. The provision as to the tax collector on March 31st of each year making a list of delinquent taxes, has no reference whatever to the time when taxes are delinquent. *Clark v. Elmendorf*, 78 S. W. Rep., 539.

The homestead is not liable for the penalty of 10 per cent provided by this article. *City of Marlin v. Green*, 78 S. W. Rep., 704.

Proceedings can be had to enforce the collection of delinquent taxes even before the Comptroller has prepared the delinquent tax record. *Masterson v. State*, 42 S. W. Rep., 1003.

A sale in gross of different tracts of land for payment of delinquent taxes and penalties is valid under Article 8, Section 15, State Constitution. *Masterson v. State*, 42 S. W. Rep., 1003.

The list referred to in this article is not the one dealt with in Article 5232c. *Watkins v. State*, 61 S. W. Rep., 533.

The homestead is subject to ten per cent penalty on delinquent taxes due upon such homestead. *Ruling of Atty. General*, p. 641, 1914-16.

The court properly refused to foreclose a tax lien on taxpayer's land, when the amount of the taxes had been deposited in the registry of the court, the lien being extinguished thereby. *State v. Hoffman* (T. C. A.), 190 S. W. 1163.

One who tenders the amount of his taxes within the time allowed by Art. 7692 R. S. thereby relieves himself of penalties, interest and costs. *State v. Hoffman* (T. C. A.), 190 S. W. 1163.

454. Provisions of Law Available to Incorporated Cities and Towns.—Any incorporated city or town or school district shall

have the right to enforce the collection of delinquent taxes due it under the provisions of this chapter. [R. S. Art. 7693.]

This act was not intended to take away the express authority given to any city by special charter to bring an ordinary suit to recover its taxes. Its purpose was merely to authorize cities, towns and school districts to accept the benefits of this act should they see proper to proceed in the manner pointed out therein. And this law has only a future effect and is not intended to operate upon existing suits. *City of San Antonio v. Berry*, 92 T. 319, 48 S. W. 496.

455. Lands Exempt from Provisions of This Chapter.—Real estate which may have been rendered for taxes and paid under erroneous description given in assessment rolls, or lands that may have been doubly assessed and taxes paid on one assessment, or lands which may have been assessed and taxes paid thereon in a county other than the one in which they are located, or lands which may have been sold to the State and upon which taxes have been paid and through error not credited in the assessment rolls, shall not be deemed subject to the provisions of this chapter. When called upon, the commissioner of the general land office shall furnish the county judge of any county compiling its own delinquent tax record, officially, with such information as may be necessary to enable him to determine the validity or locality of such surveys and grants as have not been shown by the printed abstracts of the land office. [R. S. Art. 7694.]

In view of Art. 7518, the three essential requirements were the name of the owner, if known, the description of the property, and its value, and hence, where an owner of city lots listed them for assessment as 15 acres of the J. survey, valued at \$3,000, and this assessment was not objected to either by the assessor or the board of equalization, and the owner paid taxes levied on such assessment, a subsequent assessment of the property by lots and blocks to unknown owners constituted a double assessment, in violation of this article which the city had no right to make. *McMickle v. Rochelle* (Civ. App.), 125 S. W. 74.

The provisions of Chapter 5a, Title 104, do not apply where a person has assessed and paid taxes on his property, but under an erroneous description. *Hollywood v. Wellhausen*, 68 S. W. Rep., 331.

456. Delinquent Owners May Redeem Lands Before Sale.—Any delinquent taxpayer whose lands have been returned delinquent or reported sold to the State for taxes due thereon, or any one having an interest therein, may redeem the same at any time before his lands are sold under the provisions of this chapter, by paying to the collector the taxes due thereon since January first, 1885, with interest at the rate of six per cent per annum and all costs

and the penalty of ten per cent, as provided for in Article 7692, of this chapter; provided, such penalty has accrued under the provisions and since the passage and taking effect of this chapter. [R. S. Art. 7695.]

The owner of land is entitled to possession during the two years allowed for redemption. *Masterson v. State*, 42 S. W. Rep., 1003; *City of Marlin v. Green*, 79 S. W. Rep., 40.

The mere fact that a tender was made through an agency not known to purchaser to have an interest in the land can not affect the question. The real owner is given the right by statute to redeem, and there is no law which requires him to exhibit his evidence of right at the time of redemption. *Logan's Heirs v. Logan*, 72 S. W. Rep., 418.

One who pays taxes on another's land, without authority of contract to do so, is a mere volunteer and cannot recover the payments made. *Marshall v. Beason* (T. C. A.), 165 S. W. 75.

The voluntary payment of taxes which were illegally assessed by a corporation in the city of its domicile, upon securities having a situs in another city, is no defense for refusing to pay the taxes in the city where they are situated. *Guarantee Life Ins. Co. v. City of Austin* (T. C. A.), 165 S. W. 53.

457. Owners May Redeem in Two Years by Paying Double.—

Where lands are sold under the provisions of this chapter, the owner, or any one having an interest therein, shall have the right to redeem said land, or his interest therein, within two years from the date of said sale upon the payment of double the amount paid for the land. [R. S. Art. 7696.]

A party whose property has been sold for taxes prior to 1895, in redeeming must conform to the requirements of the act of 1895, embodied in this chapter. *Conklin v. City of El Paso* (Civ. App.), 44 S. W. 879.

Statutes providing for the redemption of land from sale for taxes should be liberally construed. *Jackson v. Maddox*, 53 C. A. 478, 117 S. W. 185.

A decree that the purchaser at tax sale shall be placed in possession within 30 days, and that defendant be debarred from asserting any claim in conflict with the tax lien foreclosed, does not deprive him of his equity of redemption. *Guerquin v. City of San Antonio*, 19 C. A. 98, 50 S. W. 140.

The purchaser at foreclosure of tax lien sale is not entitled to possession until expiration of two years from date of deed. *City of Marlin v. Green*, 34 C. A. 421, 78 S. W. 704, 79 S. W. 40.

The only right acquired by a purchaser at a foreclosure sale under a tax lien is subject to right of debtor to redeem within two years by paying double the amount of the bid, and this takes away a reason for the court's interfering that might otherwise be sufficient in a case where valuable property is bought at such sale for unconscionable price. Under the operation of this law the alleged inadequacy of price paid loses most of its force. *Rogers v. Moore* 100 T. 220, 97 S. W. 686.

The refusal of a person holding under a judgment in proceedings to sell property for non-payment of tax to allow part of the property to be re-

deemed held not a wrongful refusal of permission to redeem. *Blanton v. Nunley*, 55 C. A. 427, 119 S. W. 881.

Sale of land for taxes held not to affect the owner's title and possession until the right of redemption expires. *Turner v. Smith*, 56 C. A. 1, 119 S. W. 922.

Where land is sold for taxes under a decree in foreclosure, the former owner has two years to redeem. *Berry v. City of San Antonio* (Civ. App), 46 S. W. 273. And it was error to direct that an order of sale for taxes should have the effect of a writ of possession. *League v. State* (Civ. App), 56 S. W. 262.

A judgment for the sale of land for delinquent taxes should withhold the writ of possession until the expiration of the time for redemption. *Ryon v. Davis*, 32 C. A. 500, 75 S. W. 59. And the owner's title is not extinguished until the time for redemption has expired. *Bente v. Sullivan*, 53 C. A. 454, 115 S. W. 350.

The owner of land is entitled to possession during the two years allowed for redemption. *Masterson v. State*, 17 C. A. 91, 42 S. W. 1003.

The mere fact that a tender was made through an agency not known to purchaser to have an interest in the land cannot affect the question. The real owner is given the right by statute to redeem, and there is no law which requires him to exhibit his evidence of right at the time of redemption. *Logan's Heirs v. Logan*, 31 C. A. 295, 72 S. W. 418.

One joint owner has the right by paying the purchaser double the amount of his proportionate share to redeem his interest, but unless authorized by the other joint owners he has no right to redeem theirs. *Hill v. Harris*, 49 C. A. 365, 108 S. W. 489.

The heirs of one who held the possession of land by a tenant and who had a deed to the land, have such interest as entitles them to redeem the land sold for taxes. *Jackson v. Maddox*, 53 C. A. 478, 117 S. W. 185.

Sale of land by other claimants to purchaser at tax sale held not a redemption, inuring to benefit of a claimant. *Kenson v. Gage*, 34 C. A. 547, 79 S. W. 605.

Certain transaction between owner of homestead and purchaser thereof at tax sale held tantamount to a redemption. *Bente v. Sullivan*, 52 C. A. 454, 115 S. W. 350.

One entitled to redeem from a tax sale is liable to the purchaser for interest on the amount due only from the date of the sale to the time he tenders such amount to the purchaser and offers to redeem. *Blair v. Guaranty Savings, Loan & Investment Co.*, 54 C. A. 443, 118 S. W. 608.

Redemption from tax sale held not to give new title, but simply to relieve land from the sale which has been made. *Bente v. Sullivan*, 52 C. A. 454, 115 S. W. 350.

One's redemption of land at a tax sale inures to the benefit of his equitable cotenants. *Henyan v. Trevino* (Civ. App.), 137 S. W. 458.

458. Owners May Redeem from State, When and How.—The owner or any one having an interest in lands or lots heretofore sold to the State, or any city or town, under decree of court in any suit or suits brought for the collection of the taxes thereon, or by a collector of taxes or otherwise, shall have the right within two years from the twelfth day of August, 1909, to redeem the same

upon the payment of the amount of taxes for which sale was made, together with all costs, penalties and interest now required by law, and also the payment of all taxes, interest, penalties and costs on or against said lands or lots at the time of said redemption. And, where lands or lots shall hereafter be sold to the State, or to any city or town, for taxes under decree of court, in any suit or suits brought for collection of taxes thereon, or by a collector of taxes or otherwise, the owner having an interest in such lands or lots shall have the right to redeem the same within two years after such sale, upon payment of the amount of taxes for which sale was made, together with all costs, penalties and interest now required by law, and also the payment of all the taxes, interest, penalties, cost on or against said land or lots at the time of redemption. [R. S. Art. 7697.]

459. Proceedings Against Delinquents, Unknown or Non-resident.—Wherever the owner or owners of any lands or lots returned delinquent or reported sold to the State, or that may hereafter be reported sold or returned delinquent for the taxes due thereon for any year or number of years, are non-residents of the State, or the name of the owner or owners of said land or lots be unknown, then, upon affidavit setting out that the owner or owners are non-residents, or that the owner or owners are unknown to the attorney for the State, and after inquiry cannot be ascertained, said parties shall be cited and made parties defendant by notice in the name of the State and county, directed to all persons owning or having or claiming any interest in the following described land delinquent to the State of Texas and county of....., for taxes, to-wit: (here set out description of the land as contained on the assessment roll and such further description obtainable in the petition), which said land is delinquent for taxes for the following amounts, \$..... for State taxes, and \$.....for county taxes, and you are hereby notified that suit has been brought by the State for the collection of said taxes, and you are commanded to appear and defend such suit at the.....term of the district court of.....county, and State of Texas, and show cause why judgment shall not be rendered condemning said land (or lot), and ordering sale and foreclosure thereof for said taxes and costs of suit, which notice shall be signed by the clerk and shall be published in some newspaper published in said county one time a week for three consecutive weeks. If there is no newspaper published in the county, then notice may be given by publication in a paper in an adjoining county. A maximum fee of two and one-half cents per line (seven words to count a line) for each insertion may be attached for pub-

lishing the citation as above provided for. If the publication of such citation cannot be had for the compensation provided for in this article, then publication of the citation herein provided may be made by posting a copy at three different places in the county, one of which shall be at the court house door. It shall be lawful in all cases to set forth in the petition the name of all parties interested as far as ascertained, and make them parties, and also to join and make defendants all persons having or claiming any legal or equitable interest in the land described in the petition; and such suit, after such publication, shall be proceeded with as in other cases; and, whether any party or parties make defense or not on the trial of said case, the State and county shall be entitled to prove the amount of taxes due, and shall have a decree for the sale of said land or lot as in those cases where defendant owners have been personally served and defend suit; and a sale of said land or lot shall be had and be as binding as where defendants were personally served with process. In all suits for taxes due, the defendant shall be entitled to credits he can show due him for any year or number of years for which he may be able to produce receipts; but the State shall have judgment and foreclosure of tax lien for any year or years sued for where the defendant can not offer receipt or other positive proof showing the payment of the claim for the taxes. [R. S. Art. 7698.]

See *Scales v. Wren*, 103 Tex. 304, 127 S. W. 164.

Prior to this law there was no provision of law for citing an unknown person in any case, except the unknown heirs of a known person. *Dunn v. Taylor*, 42 C. A. 241, 94 S. W. 350.

A suit to enforce a lien for delinquent taxes assessed against the property of an unknown owner held a proceeding in rem, not in a strictly judicial, but rather a step in administration proceedings, requiring the appearance of jurisdictional facts. *Young v. Jackson*, 50 C. A. 351, 110 S. W. 74.

Facts held to show that certain lots in an addition belonging to an investment company could not be sold under the statute as belonging to unknown owners. *Harvey v. Provident Inv. Co.* (Civ. App.), 156 S. W. 1127.

The notice to non-residents and unknown owners of lands sought to be subjected to taxation provided for by this article meets the requirements of "due process of law," or what is the same thing, "the law of the land," required by the Constitution. *Young v. Jackson*, 50 C. A. 351, 110 S. W. 77, 78.

To invoke process by publication in either of the statutory cases in which it is allowed, the party seeking it must make a certain affidavit, and unless this is done the service will not be legal. For instance, in case of unknown heirs, he must make oath that the names of the heirs are unknown. *Dunn v. Taylor*, 42 C. A. 241, 94 S. W. 350.

A citation of publication is not authorized unless the attorney for the

state files an affidavit that the owners of the land are non-residents of the State, or that the name of the owner is unknown, and after inquiry cannot be ascertained, and, of course, a judgment without citation may be shown to be invalid if properly attacked. *Stoneman v. Bilby*, 43 C. A. 293, 96 S. W. 52.

An affidavit of publication of a notice of tax foreclosure proceedings held sufficient on collateral attack, notwithstanding the absence of the clerk's seal from the jurat, and the affidavit not void, but subject to amendment. *Young v. Jackson*, 50 C. A. 351, 110 S. W. 74.

Under this article the affidavit is a prerequisite to the filing of the suit and citation by publication is unauthorized except on the filing of the affidavit, and the judgment without it is subject to collateral attack. *Mote v. Thompson* (Civ. App), 156 S. W. 1105.

A notice directed to the sheriff or any constable, instead of to all persons owning or claiming any interest in the land, etc., is fatally defective. A substantial compliance with the statute is essential to give jurisdiction. *Earnest v. Glaser*, 32 C. A. 378, 74 S. W. 606.

The statute gives the form of citation to be issued. The date of filing suit does not appear in the form, therefore the citation is sufficient without it. *Kenson v. Gage*, 34 C. A. 547, 79 S. W. 606.

The command of the sheriff to publish the notice to unknown owners preceding the notice and the command to him to make his return following the notice do not invalidate the citation by publication. *State v. Unknown Owner*, 47 C. A. 188, 103 S. W. 1116.

The notice by publication of suit against unknown owners to foreclose tax lien must so describe the land as to identify it and the unknown owners. Where the suit is for taxes on the Netherly survey and the citation as issued calls it the Wetherby survey and as published the Wetheraby, it is no notice at all to the unknown owners. *Harris v. Hill* 54 C. A. 437, 117 S. W. 908.

A citation under this article need not recite the file number of the suit under Art. 1852, nor state the amount of the costs. *Unknown Owner v. State*, 55 C. A. 300, 118 S. W. 803.

Where an order of publication in a tax suit summoned "George Eels and his unknown heirs," and there was a final judgment against "George Eels," and a dismissal as to the "unknown heirs of George Ellis," the suit stood dismissed as to the "heirs of George Eels." *Eels v. Blair* (Civ. App), 60 S. W. 462.

A judgment rendered under due publication in a tax suit against the owner of land and his unknown heirs, in which the suit was dismissed as to the heirs and the land ordered sold, held valid. *Id.*

Sale under judgment of Galveston district court foreclosing tax lien held void for irregularity. *Cordray v. Neuhaus*, 25 C. A. 347, 61 S. W. 415.

In a suit for taxes against non-residents, it is error to enter judgment for the gross sum due against several owners of different tracts without stating what amount of taxes was adjudged to be a lien on each separate tract. *Borden v. City of Houston*, 26 C. A. 29, 62 S. W. 426.

A judgment for taxes against the "unknown heirs" of a former owner is void as to the owner under grant from the deceased, and who had no notice of the suit. *Green v. Robertson*, 30 C. A. 236, 70 S. W. 345.

Where the owner of the land is in occupation thereof, the State cannot

deprive him of title by tax foreclosure suit against unknown owners. *Bingham v. Matthews*, 39 C. A. 41, 86 S. W. 781.

A citation and judgment in a proceeding to sell land of an unknown owner for taxes held void. *Bowden v. Patterson*, 51 C. A. 173, 111 S. W. 182.

A judgment in a suit to foreclosure a tax lien held a judgment against all unknown owners made parties. *Sellers v. Simpson*, 53 C. A. 205, 115 S. W. 888.

But is not binding upon persons in possession, but not served with process. *Id.*

Where the judgment in a tax suit does not show that the court determined that due service had been made on the owners of the land, and the record shows a fatally defective notice, the judgment may be collaterally attacked. *Harris v. Hill*, 54 C. A. 437, 117 S. W. 907.

A person in possession claiming adversely to the owner whose title has been perfected by the ten-year statute who has no notice of a tax suit against the unknown owner is not affected by such suit or any judgment obtained therein. *Patton v. Minor* (Civ. App.), 117 S. W. 922.

Under this article the recital in a judgment of due notice to defendant, "an unknown person," was conclusive against a collateral attack, though it appeared that the citation was directed to an unknown person, and not to all persons owning or claiming any interest in the land. *Carr v. Miller* (Civ. App.), 123 S. W. 1158.

Failure to appoint an attorney to represent a defendant served by publication and to direct the case to stand continued did not render the judgment absolutely void. *Id.*

Under Const. Art 8, par. 15, and Arts. 7528, 5683, where defendants, in adverse possession of certain land, had not been in possession for the ten years required to confer title when the State instituted suit to foreclose its lien for unpaid taxes, so that they were not proper parties to such action, they were still bound by the judgment, though not served with notice, as provided by this article, and hence were not entitled to hold the land as against the purchaser from the State and those claiming under him. *Patton v. Minor*, 103 T. 176, 125 S. W. 6.

Owners of land holding under recorded deeds and decree of partition are not unknown owners, and they are not bound by a judgment for delinquent taxes rendered in a suit against unknown owners. *Nunley v. Blanton*, 103 T. 316, 126 S. W. 1110, affirming *Blanton v. Nunley*, 55 C. A. 427, 119 S. W. 881.

In a suit to quiet title, where plaintiff's deed was on record, and gave his residence as in a certain county of the State, a judgment for taxes against the "unknown owners" did not conclude plaintiff's title, since he was entitled to service of citation if within the jurisdiction of the court, and, not being an unknown owner, he was not a party to the proceedings. *Scales v. Wren*, 103 T. 304, 127 S. W. 164, affirming *Wren v. Scales*, 55 C. A. 62, 119 S. W. 879.

A Judgment against unknown owners, foreclosing a tax lien, is not invalid because it is against "defendant," instead of "defendants." *Mangum v. Kenley* (Civ. App.), 145 S. W. 316.

Judgment against unknown owners, foreclosing a tax lien, is binding on the real owners. *Id.*

That the minutes of the term at which a judgment foreclosing a tax lien

against the unknown owner of land was rendered had never been approved by the trial court, and that no attorney was appointed to represent such owner, as required by statute, were mere irregularities which could not be urged on collateral attack on the judgment and sale held pursuant thereto. *Jameson v. O'Neill* (Civ. App.), 145 S. W. 680.

Where the record owner of real estate rendered the same for taxes and paid the taxes thereon within the time limited by law, a judgment for delinquent taxes rendered in an action against unknown owners was void, because beyond the jurisdiction of the court. *Mote v. Thompson* (Civ. App.), 156 S. W. 1105.

Sale under judgment in suit against unknown owners to enforce taxes held ineffectual against the owners who were in possession. *Pearson v. Branch* (Civ. App.), 87 S. W. 222.

Bona fide vendee of a purchaser of a tax sale held entitled to protection in his title. *Williams v. Young* (Civ. App.), 90 S. W. 940; *Speer v. Louisiana & T. Lumber Co.* (Civ. App.), 90 S. W. 943.

The fact that a deed at a delinquent tax sale only purported to convey the interest of an owner named and his unknown heirs held not to affect the claim of the purchaser under the unknown owners, made parties. *Ball v. Carroll*, 42 C. A. 323, 92 S. W. 1023.

A purchaser on execution of a vendee's interest in certain land held to have acquired only an equity, to obtain the legal title by payment of the balance of the purchase money. *Lippincott v. Taylor* (Civ. App.), 135 S. W. 1070.

A notice directed to the sheriff or constable, instead of to all persons owning or claiming any interest in the land, etc., is fatally defective. A substantial compliance with the statute is essential to give jurisdiction. *Earnest v. Glaser*, 74 S. W. 606.

In suits against unknown owners, the citation must be in substantial compliance with Article 5232o, and must state that a foreclosure of the lien is desired. *Netzorg v. Geren*, 62 S. W. 789; *Earnest v. Glaser*, 74 S. W. 605.

The statute gives the form of citation to be issued, and, in passing on the validity of the citation, it alone is to be looked to. *Kenson v. Gage*, 79 S. W. 606.

The citation must be in compliance with the statute. *Babcock v. Wolfarth*, 80 S. W. 642.

A judgment by default for delinquent taxes and foreclosure of tax lien against a non-resident cited by publication is not supported unless an attorney ad libitum is appointed, and a statement of the evidence approved by the judge is filed as a part of the record. *Garvey v. State*, 13 T. C. R., 646, 786.

460. Similar Proceedings May Be Instituted by City or Town.—

In any incorporated city or town, in which any lots or blocks of land situated within the corporate limits of said city or town have been returned delinquent or reported sold to said city or town for the taxes due thereon, the city council may prepare lists of delinquents in the same manner as is provided for in Article 7685, and; when such lists shall be certified to as correct by the mayor of said city or town, the city council may direct the city attorney to

file suit in the district court of the county in which said city or town is situated, for the recovery of the taxes due on said property, together with penalty, interest and costs of suit; which suits may be brought in the same manner as is provided in Article 7687 of this chapter, for the bringing of suits by the county attorney. [R. S. Art. 7699.]

461. Lands to Be Platted and Numbered in Certain Counties.—

In counties in which the subdivisions of surveys are not regularly numbered, and in cities or towns in which the blocks or subdivisions are not numbered, or are so irregularly numbered as to make it difficult or impossible for the assessor to list the same, the commissioners' court of such counties may have all the blocks and subdivisions of surveys platted and numbered so as to identify each lot or tract, and furnish the assessor with maps showing such numbering; and an assessment of any property by such numbering on said maps shall be sufficient description thereof for all purposes; and such maps, or a certified copy of same or any part thereof, shall be admissible as evidence in all courts; provided, that the cost of making said survey and plats shall be defrayed by the county in which said property is situated, and of which the said commissioners' court ordered the said surveys and plat made; provided that the cost of any map of a town or city shall be paid by such town or city when ordered by the town or city. [R. S. Art. 7700.]

Misappropriation of the price by the officer is no ground for setting aside a sale for taxes. *Bean v. City of Brownwood* (Civ. App.), 43 S. W. 1036.

Sale of taxes set aside for failure of sheriff to serve notice of the time and place of selling real estate. *Bean v. City of Brownwood*, 91 T. 684, 45 S. W. 897, reversing *Bean v. City of Brownwood* (Civ. App.), 43 S. W. 1036.

Tax sale set aside for inadequacy of price and failure to give notice of sale. *Edwards v. Harnberger* (Civ App.), 55 S. W. 42.

Inadequacy of price paid at a tax sale held insufficient to warrant an avoidance of the sale. *Collins v. Ferguson*, 22 C. A. 552, 56 S. W. 225; *Crosby v. Bonnowsky*, 29 C. A. 455, 69 S. W. 212; *Ross v. Drouilhet*, 34 C. A. 327, 80 S. W. 241; *Blanton v. Nunley*, 55 C. A. 427, 119 S. W. 881.

Proceeding by property owners for relief from void tax sale held properly brought in the form of a motion to set aside the judgment and sale. *Crosby v. Terry*, 41 C. A. 594, 91 S. W. 652.

A tax deed cannot be avoided unless the taxes are paid or tendered, though the collector made excessive charges for costs of sale. *Eustis v. City of Henrietta* (Civ. App.), 41 S. W. 720.

Where tax sale was void, owners on moving to set aside the same were only required to tender taxes and costs justly chargeable to them. *Crosby v. Terry*, 41 C. A. 594, 91 S. W. 652.

Party holding tax title based on void decree held not entitled to have

amount paid by him refunded by owner of land. *Schaffer v. Davidson*, 44 C. A. 100, 97 S. W. 858.

Where a sale of land for taxes was fatally defective, but not fraudulent, it would only be set aside on the restoration to the purchasers of the full amount of their bid. *Moore v. Rogers*, 100 T. 361, 99 S. W. 1023.

Refusal to find that an owner of land sold for taxes would have designated a fractional portion for sale if he had been served with notice held proper in an action to set aside the sale. *Bean v. City of Brownwood* (Civ. App.), 43 S. W. 1036.

Where a tax sale is void, the owner is only liable for taxes due under the laws in force at the time the taxes became due. *Conklin v. City of El Paso* (Civ. App.), 44 S. W. 879.

Where defendant claimed title to land by sheriff's tax deed, and prayed that, if sale was void, he be decreed to have lien on land for taxes paid, his lien should not have been decreed for double the amount paid. *Murphy v. Williams* (Civ. App.), 56 S. W. 695.

Where plaintiff asserted title to land which defendant claimed by sheriff's deed under tax foreclosure, a set-off of rental value of land against taxes paid by defendant was not required, when defendant had received no rent and improvements by tenant exceeded rental value. *Id.*

On the setting aside of a tax sale for irregularity in the order of sale and advertisement, held, the purchaser was properly allowed the amount of his bid at the sale. *Rogers v. Moore* (Civ. App.), 94 S. W. 114.

Plaintiff held not entitled to recover from a tax collector the expense of having set aside judgments against her land for taxes; his neglect of duty not being the proximate cause of the suits. *Coleman v. Lytle*, 49 C. A. 42, 107 S. W. 562.

Compensation for improvements by claimant under void tax title.—See notes under Art. 7760.

462. What Constitutes Evidence of Title to Redeem Land.—In all cases where lands in this State have been or may be sold for taxes, and the owner of the land, at the time of such sale, shall desire to redeem the same, under the provisions of the Constitution of this State, or of laws enacted on that subject, it shall be sufficient to entitle such owner to redeem from the purchaser or purchasers thereof for him to have had a paper title to such land, or to have been in possession of such land in person or by tenant, at the time of the institution of the suit under which the sale was made, or when such sale was made; and the existence of such facts and conditions shall be sufficient *prima facie* evidence of ownership to entitle the party so claiming ownership to the right to redeem such land; and he shall not be required to deraign title from the sovereignty, nor shall any hiatus or defect in his chain of title defeat the offered redemption. Nothing herein contained shall be held to limit the right of one offering to redeem to prove ownership otherwise than herein provided, nor prevent any one having the superior title from redeeming such land within two

years from the date of the tax sale by paying to the person who had previously redeemed such lands all amounts paid by him with legal interest. [R. S. Art. 7701.]

463. Commissioners' Court May Order List Made of Property Omitted from Tax Rolls, Etc.—Whenever the commissioners' court of any county in this State shall discover, through notice from the tax collector or otherwise, that any real property has been omitted from the tax rolls for any year or years since 1884, or shall find that any previous assessments on any real property for the years mentioned are invalid, or have been declared invalid for any reason by any district court in a suit to enforce the collection of taxes on said properties, they may, at any meeting of the court, order a list of such properties to be made in triplicate and fix a compensation therefor; the said list to show a complete description of such properties, and for what years such properties were omitted from the tax rolls, or for what years the assessments are found to be invalid, and should be canceled and re-assessed, or have been declared invalid, and thereby canceled by any district court in a suit to enforce the collection of taxes; provided, that no re-assessment of any property shall be held against any innocent purchaser of the same, if the tax records of any county fail to show any assessment (for any year so re-assessed) by which said property can be identified and that the taxes are unpaid. The above exception, with the same limitation, shall also apply as to all past judgments of district courts canceling invalid assessments. [R. S. Art. 7702.]

See *State v. Adams* (Civ. App.), 126 S. W. 674.

464. Property Omitted Listed and to Be Assessed, How.—When said list has been made up in the manner prescribed in Article 7701 [7702] the commissioners' court may, at any meeting, order a cancellation of such properties in said list that are shown to have been previously assessed, but which assessments are found to be invalid and have not been canceled by any former order of the commissioners' court, or by decree of any district court; and shall then refer such list of properties to be assessed or re-assessed to the tax assessor, who shall proceed at once to make an assessment of all said properties, from the data given by said list (the certificate of the State Comptroller as to assessments or re-assessments made by the tax assessor shall not be necessary as required under Article 7675, Revised Statutes, but he shall furnish all blank forms needed, that uniformity may be had in all counties), and when completed shall submit the same to the commissioners' court, who shall pass upon the valuations fixed by him; and, when approved as to the

values, shall cause the taxes to be computed and extended at the tax rate in effect for each separate year mentioned in said list; and, in addition thereto, shall cause to be added a penalty equal in amount to what would be six per cent interest to the date of making said list from the date such properties would have been delinquent had same been properly rendered by the owner thereof at the time and for the years stated in said list; provided, that the certificate of any tax collector of this State, given during his term of office, that all taxes have been paid to the date of such certificate on any certain piece of property, which is fully described in such certificate, or if the tax rolls of any county fail to show any assessments against such property sufficient to identify it, and that the same was unpaid at the dates such rolls may have been examined to ascertain the condition of any property as to taxes unpaid, this shall be a bar to any re-assessment of such property under this act for any years prior to the date of such certificate, or such examinations; provided, that the property referred to, when reassessed, shall be held by an innocent purchaser, who has relied upon the correctness of such certificate, or the tax rolls heretofore referred to. [R. S. Art. 7703.]

465. Such List, So Made, to Operate as a Lien on Property.—The said list, when complete in all respects, as directed in the preceding articles, and filed with the tax collector, shall constitute a valid lien against all the properties mentioned in said list for the full amount of taxes, penalties, officers' costs, advertising and six per cent interest from the date of said list to the date of the payment of the full sum due on each separate piece of property. A copy of said list and all cancellation orders shall be furnished to the State Comptroller, and a copy filed with the county clerk. [R. S. Art. 7704.]

466. Such Omitted Property to Be Advertised.—The commissioners' court shall proceed to have such list of properties advertised in the manner provided in Article 7687; after which, suit may be filed in the same manner as provided by law for the enforced collection of delinquent taxes. [R. S. Art. 7705.]

467. Commissioners' Court Authorized and Empowered to Reduce Assessments, When.—In all cases of delinquent taxes of unrendered and unknown property, where there appears to be an assessment of the same at a valuation excessive and unreasonable, the commissioners' court of any county shall be authorized to correct or reduce such values on the request of the tax collector with a full statement of the facts in each case; which statement and the action had thereon and the name of each commissioner voting for

or against the reduction in valuation asked for shall be entered upon the minutes of the court; and a certified copy of the action had thereon shall be furnished to the Comptroller of the State, and, when the values are so corrected or reduced, payment of taxes shall be accepted in accordance with such reduction, to which shall be added interest, penalty, advertising and costs, as provided by law. [R. S. Art. 7706.]

468. Commissioners' Court May Contract for Collection of Delinquent Taxes, When.—If the commissioners' court of any county in this State shall deem it expedient to contract with any person to enforce the collection of any delinquent State and county taxes, or to make up a list of properties referred to in this chapter, and to enforce the collection of taxes thereon for a per cent of the taxes, penalty and interest actually collected and paid to the collector of taxes, the State Comptroller shall be authorized to join in said contract and allow the same per cent for State taxes that is contracted to be paid by the commissioners' court for the collection of county taxes, which shall not exceed ten per cent, except in case of absolute necessity to employ an attorney to push the filing and prosecution of tax suits, and to pay for report of an abstract company as to the owner of property assessed as unknown or unrendered, and as to the holder of any liens against the same, in which case fifteen per cent additional may be allowed. It shall be the duty of the county attorneys of the several counties, or of the district attorney where there is no county attorney, to actively assist the person with whom the contract is made, by filing and pushing to a speedy conclusion all necessary suits for the collection of delinquent taxes under any contract; provided, that where any district or county attorney shall fail or refuse and in good faith to prosecute such suits, he shall not be entitled to any fees from such suits; provided, that, where any district or county attorney fails or refuses to bring these suits when requested to do so by the commissioners' court, or by the person having a contract herein provided for, then the contractor shall be authorized to employ some other attorney to file these suits in the name of the State, in the same manner provided by law now to enforce the collection of delinquent taxes. [R. S. Art. 7707.]

NOTE.—Above article expressly repealed by Act of 1915, but some contracts are still in force.—Editor.

See *Lane v. Mansfield*, 158 S. W. 223.

The commissioners' court is authorized to make a contract with a party to collect the delinquent back taxes and pay him a commission for his services, and can order the tax collector to pay the commission earned under

his contract, and it is the duty of the tax collector to obey the order. *Bailey v. Aransas County*, 46 C. A. 547, 102 S. W. 1159.

The county attorney cannot contract to prepare delinquent tax lists and collect delinquent taxes. *Stringer v. Franklin County* (Civ. App.), 123 S. W. 1168.

State Comptroller has no power to cancel contract. *Lane v. Mayfield*, 158 S. W. 223.

469. Bulk Assessments Validated, When.—In all suits to enforce the collection of delinquent taxes, where the assessment of any property for any year is invalid by reason of the failure of the assessor to comply with the provisions of law for the description of any lot, block or tract of land, or to give a separate value on each lot, block or tract of land, known as "bulk assessments," or to enter upon the lists (similar to that used for the listing of rendered property, to be signed by the owner) all items of property assessed to unknown owners, all such assessments are hereby validated and given the same force and effect as if the descriptions, the separate valuations, and the listing were in all respects strictly in compliance with law; provided, as to description, that the descriptions given are sufficient to identify the property, as to separate values, that the valuations and the taxes shown upon the tax rolls (in what are called "bulk assessments") can be fairly prorated to each separate lot, block or tract of land; and, as to listing, that the valuation given on the tax rolls upon properties assessed as unknown are found to have been entered upon the assessor's block book as the original assessment, instead of listing as in rendered assessment, and then entering upon the tax rolls. [R. S. Art. 7708.]

See *State v. Adams* (Civ. App.), 126 S. W. 674.

This article curing defective assessments, is valid. *Haynes v. State*, 44 C. A. 492, 99 S. W. 409.

470. Delinquent Tax Record to Be Published, How.—The various counties of this State which have not heretofore made and published a delinquent tax record, under the provisions of Chapter 103, Acts of the Regular Session of the Twenty-fifth Legislature, are hereby authorized and it shall be their duty to make and publish the same to date hereof, and, when so done, it shall have the same force and effect as if made and published under that act; and any county which has heretofore made a delinquent tax record for any number of years is hereby authorized and empowered to re-compile the same to date hereof, and may compile each year thereafter under the provisions of said act. [R. S. Art. 7709.]

NOTE.—Superseded by provisions of Chapter 147, Acts 1915, which makes duties mandatory and provides a penalty.

471. Property Listed by Comptroller, When.—Whenever it shall appear to the Comptroller of Public Accounts of the State, from an inspection of the tax rolls of any county of the State, or otherwise, that any lands in such county subject to taxation have not been assessed for taxation for any year since and including the year 1900, it shall be his duty and he is hereby required to make a list of such lands and send the same to the tax collector of such county by registered letter, properly addressed, accompanying such list with instructions to such tax assessor to assess such lands for taxes for the years for which they have not been assessed as shown by said list. [R. S. Art. 7710.]

472. Duty of Assessor to Post Notice.—Upon receipt of such list, the tax assessor shall immediately post a copy of such notice and list at the court house door of his county, noting upon such copy the date of such posting; and the owners of the lands embraced in such list shall have the right, at any time within twenty days of such posting, to render the same to the tax assessor for the taxes for the years for which they have not been assessed for taxes, or for any of such years as shown by such notice, in the same manner as is provided for the rendition of other property for taxes under the provisions of the general laws for that purpose. [R. S. Art. 7711.]

473. Lands Not Rendered to Be Assessed, How.—Should any of the said lands remain unrendered by the owners or owner thereof, under the provisions of Article 7711, for any of the years for which the same have not been assessed according to said notice and lists, for twenty days after the date of the posting of such notice, it shall be the duty of the tax assessor, and he is hereby required, immediately upon the expiration of such time, to assess for taxes at their true value such lands so remaining unrendered and unassessed for each of the years since and including the year 1900, and including the year such lists are made up by the Comptroller, listing the same in the name of unknown owners, and charging up to said lands the taxes, State and county, for which they are liable for each of such years, valuing such lands at their true and full value as provided in Article 7530, Revised Civil Statutes. If any of said lands are lands purchased from the State as belonging to the school fund, the University, or any of the asylums of the State, and held under such contract of purchase upon which a part of the purchase money is still due, such lands being unpatented, no deduction shall be made in the value of said lands for, or on account of, such unpaid purchase money, but they shall be valued

at their full and true value as though paid out and patented. [R. S. Art. 7712.]

474. Duty of Commissioners' Court When Lists Are Made Up.—The tax assessor shall make up lists showing such assessment, and deliver the same to the county judge, who shall at once, unless a regular session is held within ten days thereafter, call a meeting of the commissioners' court in special session, as a board of equalization, for the purpose of passing upon said assessment lists in the manner provided in case of regular assessments, in so far as the provisions of the statute with regard thereto are applicable. It shall be the duty of the commissioners' court without delay to act upon said supplemental assessment lists, as to the value of the property embraced, and, when said values have been equalized as required by law, to approve the same, and to approve the rolls made up by the tax assessor in accordance therewith; provided, that the commissioners' court shall have no authority to alter said assessment lists, or in any way interfere with such assessments, except as to the values of property embraced therein, in equalizing the same as provided by law, and to strike therefrom any lands that have been already assessed for taxes at their true market value for the years for which they are assessed on said supplemental rolls and such taxes paid. [R. S. Art. 7713.]

475. Supplemental Tax Roll to Be Prepared by Tax Assessor.—After such supplemental assessment lists, as are herein provided for, have been passed upon by the board of equalization as herein provided, supplemental tax rolls shall be prepared by the tax assessor and approved by the commissioners' court as is required by law in case of the regular assessment for taxes; and thereafter the taxes due according to such supplemental rolls shall be collected as in case of other taxes, and, if not paid, such proceedings shall be had for their collection as in case of other taxes. [R. S. Art. 7714.]

476. Fees to Which Assessor Shall Be Entitled.—For making the supplemental assessments provided herein, the tax assessor shall be entitled to the same fees to be paid in the same manner as is provided by law in case of regular assessments. This chapter is cumulative of all other laws upon the same subject. [R. S. Art. 7715.]

477. Of Municipal Taxes to Pay Subsidies in Aid of Railroads and Other Internal Improvements—Such Taxes, How Applied.—All taxes levied, assessed and collected for the purpose of paying the interest and principal of bonds heretofore issued by cities or towns to aid in the construction of railroads and other works of internal improvement, shall be applied solely to the objects for which they

were levied, under the direction of the Comptroller, as follows: First, to the payment of expenses of assessing and collecting the same; second, to the payment of the annual interest of such bonds, and not less than two per cent of the principal; and, if there be any excess on hand after making the above payments for the current year, it shall be used in the purchase and cancellation of said bonds. [R. S. Art. 7716.]

478. Such Taxes to Be Collected by City Officers.—All such taxes shall be assessed and collected by the same officers whose duty it is to assess and collect the other municipal taxes, who shall receive the same rates of commission allowed for assessing and collecting the ad valorem tax of such city. The same remedies shall be used to enforce the assessment, collection and paying over such taxes as are or may hereafter be provided by law to enforce the assessment, collection and paying over of other municipal taxes. [R. S. Art. 7717.]

479. Bond of the Officer Collecting Such Taxes.—The officer whose duty it is to collect the aforesaid taxes shall give bond, with two or more sufficient sureties, to be approved by the mayor and board of aldermen of such city, in a sum fifty per cent greater than the estimated annual amount of said taxes; which bond shall be payable to the State, and shall be conditioned for the faithful assessing, collecting and paying over of said tax into the State Treasury, as provided by law; and said assessor shall be amenable and subject to all laws enacted to secure the honest and faithful performance of the duties of collectors of taxes. [R. S. Art. 7718.]

A city has no right of action on the bond of its tax collector for a claim arising from collection of taxes, which by this article he is required to pay into the State Treasury. *House v. City of Dallas*, 96 Tex. 594, 74 S. W. 902.

480. Such Taxes May Be Paid in What.—It shall be lawful for the collector to receive in payment of the taxes herein specified current money or the matured coupons of the bonds for the payment of which such tax may have been levied. [R. S. Art. 7719.]

481. Such Taxes to Be Paid Over Every Month.—The collector of taxes, levied under the provisions of this chapter, shall pay over to the State Treasurer, at the beginning of each and every month, all moneys or coupons he may have collected during the preceding month, deducting his legal commissions on the amount so paid, and shall make a report of his collections to the mayor and city council at its first regular meeting in each month. [R. S. Art. 7720.]

482. If Insufficient, Additional Levy to Be Made.—If it shall be ascertained, at any time, that the tax which has been levied for

the payment of the city bonds issued under the provisions of law is insufficient to pay the annual interest and two per cent annually of the principal of such bonds, besides the expenses of assessing, collecting and paying over such tax, it shall be the duty of the Comptroller to inform the mayor of said city of the fact; and it shall be the duty of the city council, and they shall, upon such information, levy such additional tax, and cause the same to be collected, as will be sufficient to make such payments; which levy shall be continued in force until the whole amount of principal and interest of said bonds shall have been fully paid. [R. S. Art. 7721.]

483. When New Counties Are Created, Etc.—Where any county now or hereafter created out of a part of any one or more organized counties, or when any unorganized county may be organized by the election and qualification of its officers, it shall be the duty of the person in charge of the assessors roll in the county or counties from which such new county or any part of it, has been taken, or to which such unorganized county has been attached for judicial purposes, to allow such person as the commissioners court of the newly organized county may appoint for that purpose access to the rolls for the purpose of making the transcripts hereinafter provided for. [R. S. Art. 7722.]

NOTE.—See Chapter 50, Acts 1917, pp. 88 and 89.

See *Parish v. Ralls* (Civ. App.), 133 S. W. 933.

The Legislature can attach an unorganized county to several organized counties for different purposes, as convenience may suggest. *First Nat. Bank v. McElroy*, 51 C. A. 284, 112 S. W. 801.

The legal existence of a county created by the Legislature and recognized by the State can be questioned as containing the area required by the Constitution by the State alone. *Blackburn v. Delta County*, 48 C. A. 370, 107 S. W. 80.

An unorganized county has generally been treated as a part of the county to which it is attached for judicial purposes so far as exercise of local governmental power over it is concerned. *Cattle Co. v. Faught*, 69 T. 402, 5 S. W. 494.

No credit will be given to the new county for public buildings and bridges remaining in the old county. *Mills County v. Brown County*, 29 S. W. 650, 87 T. 475.

The term "new counties" includes all counties created out of others. As to payment of debts by new counties. *Id.*

The statute of limitations did not begin to run against suits authorized by this article until its enactment; and a suit brought within two years thereafter was in time. *Mills County v. Lampasas County* (Civ. App.), 40 S. W. 552. The claim need not be presented to the commissioners' court for allowance under Art. 790. *Mills County v. Lampasas County*, 90 T. 603, 40 S. W. 403; *Id.* (Civ. App.), 40 S. W. 552.

In action by county against a new county created out of it to recover proportionate part of the original county's debt, taxpayers of the new county are not necessary parties. *Hardeman County v. Foard County*, 19 C. A. 212, 47 S. W. 30, 536.

Defendant was not entitled to credit for back taxes collected in the territory after the organization of the new county. *Id.*

The new county is entitled to credit for back taxes collected by parent county in territory of the new county after organization. *Hardeman County v. Foard County*, 19 C. A. 212, 47 S. W. 30, 536.

Suit can be brought in the parent county against counties that have been carved out of the former, to force the new counties to pay their pro rata of an indebtedness incurred by the parent county before the new counties were formed and the new counties are liable for their pro rata share of indebtedness, in a suit brought by the holders of the indebtedness against the parent county and are proper parties to such suit. *Jeff Davis County et al v. City Nat. Bank*, 22 C. A. 157, 54 S. W. 39.

County bonds held valid obligations in favor of a bona fide holder against the county issuing them and counties taken therefrom. *Jeff Davis County v. First Nat. Bank*, 22 C. A. 157, 54 S. W. 39.

In action by county to recover of another created from it its proportion of debt of the original county, held, the tax rolls were not conclusive, where it appeared on their face that the same property had been twice listed therein. *Hardeman County v. Foard County*, 19 C. A. 212, 47 S. W. 30, 536.

484. Transcripts of Unpaid Assessments.—It shall be the duty of the person so appointed to make from such assessors rolls two transcripts of the unpaid assessments, both on person and property, in that portion of the county included within the limits of the new county, or, as the case may be, in the limits of the former unorganized county. [R. S. Art. 7723.]

485. Transcripts to Be Verified.—The collector of the county from which such territory has been taken, or to which such unorganized county has been attached, shall examine and verify the transcripts herein provided for and attest their correctness over his official signature. For such service he shall receive twenty dollars from the county for which the transcript has been made, to be paid on the order of its commissioners court. He shall also have the commissioners court of his county to approve the transcript rolls, and shall deliver one of them to the collector of the new county; the other he shall forward to the Comptroller; and, when received by the Comptroller, it shall authorize him to give the proper credit to the collector of the old county and to charge the same to the collector of the new county. [R. S. Art. 7724.]

486. Compensation of Collector of New County.—The collector of such new county shall receive the same compensation, and shall have the same authority to collect and enforce the collection of

the taxes found to be due by such transcripts as is enjoyed by the collectors of the other counties in this State. [R. S. Art. 7725.]

487. Compensation to Be Allowed for Transcribing Rolls.—The person selected by the commissioners' court of the new county to make such transcripts shall receive for his services such compensation as he may agree on with such commissioners' court. [R. S. Art. 7726.]

The general rule of constitutional law that a sovereign power conferred upon one branch of the government cannot be delegated applies to taxation, but does not prevent delegating authority to municipal corporations provided such authority is subject to recall. *Stratton v. Commissioners' Court of Kinney County* (Civ. App.), 137 S. W. 1170.

Revenue laws are to be constructed fairly for the government and justly for the citizen, and so as to carry out the intention of the Legislature gathered from the language used, read in connection with the general purpose of the law. *Eppstein v. State* (Civ. App.), 138 S. W. 628.

In the absence of constitutional limitation, a Legislature held empowered to prohibit or place a prohibitive tax on sale of harmful articles. *Ex parte Townsend*, 64 C. R. 350, 144 S. W. 628.

The revocation or suspension of a license to follow a lawful occupation is penal in effect, and the imposition of such penalty involves all the elements of a judicial proceeding. *Wichita Electric Co. v. Hinckley* (Civ. App.), 131 S. W. 1192.

488. Duties of Tax Collector to Notify All Delinquents.—Not later than the first day of May, 1916, in all counties of less than 50,000 inhabitants, and not later than the first day of May, 1917, in all counties of more than 50,000 inhabitants, and not later than the first day of June in every year following thereafter, it shall be the duty of the collector of taxes in the various counties of this State to mail to the address of every record owner of any lands or lots situated in such counties, a notice showing the amount of taxes appearing delinquent or past due and unpaid against all such lands and lots according to the delinquent tax records of their respective counties on file in the office of the tax collector, and a duplicate of which shall also have been filed in the office of the Comptroller of Public Accounts of the State of Texas and approved by such officer; such notice shall also contain a brief description of the lands or lots appearing delinquent, and various sums or amounts due against such lands or lots for each year they appear to be delinquent according to such records, and it shall also be the duty of the tax collectors of the various counties in this State not later than the dates named, and every year thereafter, to furnish to the county or district attorneys of their respective counties duplicates of all such statements mailed to the taxpayers in

accordance with the provisions of this Act, together with similar statements, or in lieu thereof, lists of lands and lots located in such counties containing amounts of State and county taxes due and unpaid, and the years for which due, on lands or lots appearing on such records in the name of "unknown" or "unknown owners," or in the name of persons whose correct address or place of residence in or out of the county said tax collector is unable by the use of due diligence to discover or ascertain; and it shall be the further duty of the tax collector to furnish on demand of any person or persons, firm or corporation, like statements with reference to any particular lot or tract of land for whatever purpose desired, which shall be in all instances certified by him with the seal of his office attached; said notices or statements herein provided for shall also recite that unless the owner or owners of such lands or lots described therein shall pay to the tax collector the amount of taxes, interest, penalty and costs set forth in such notice within 90 days from date of notice, then, and in that event, the county or district attorney will institute suits not later than January 1, next, for the collection of such moneys, and for the foreclosure of the constitutional lien existing against such lands and lots; and whenever any person or persons, firm or corporation shall pay to the tax collector all of the taxes, interest, penalties and costs shown by the records aforesaid to be due and unpaid against any tract, lot or parcel of land for all of the years for which said taxes may be shown to be due and unpaid, then it shall be the duty of the tax collector to issue to such person or persons, firm or corporation a redemption receipt covering such payment as is now required by law. [Sec. 1, Chap. 147, Acts 1915, p. 250.]

Under the above Act, Thirty-fourth Legislature, authorizing suits for collection of delinquent taxes and for notices of such taxes to record owners not later than date named and for statements to county or district attorney, held, that notice could not be sent out after such date and to successfully prosecute such suit State must allege and prove that all requirements of Act have been complied with. *State v. Seidell*, 194 S. W. 1118.

489. How Notices and Statements Shall Be Made Out by Collector.—In making up the notices or statements provided for in Section 1 of this Act, it shall be the duty of the tax collectors of the various counties in the State to rely upon the delinquent tax records compiled, or to be compiled, under the provisions of Article 7685 and Article 7707 of the Revised Civil Statutes of the State of Texas for 1911, which have been approved by the commissioners' court of such counties and a duplicate of which has

been filed in the office of the Comptroller of Public Accounts of the State of Texas, and which has or shall hereafter be approved by such State officer; and it shall be the duty of the tax collector, whenever there shall be as many as two years of back taxes that have not been included in such delinquent tax records to prepare or cause to be prepared a supplement to such records which shall be prepared in duplicate, one copy to be filed in the office of the county clerk and one copy thereof to be furnished to the Comptroller of Public Accounts subject to his approval; and whenever said supplement shall have been approved by the commissioners' court and by the State Comptroller, then the tax collector shall rely thereon for the data covering delinquent taxes for said years in making out the notices or statements provided for in Section 1 of this Act; provided, said tax collector in making up said delinquent tax record and supplement, shall examine the records of the district court and the county clerk's office of his county and no tract of land shall be shown delinquent on said delinquent tax record for any year where the records of the district court or the county clerk's office show that the taxes for said year have been paid. It shall not be necessary to publish said delinquent tax records and supplements thereto if the delinquent list for each year has been advertised as required by Article 7692 of the Revised Civil Statutes of 1911. To enable the tax collector to comply with the provisions of Section 1 of this Act, it shall be the duty of the tax assessors of the various counties of the State to hereafter enter the postoffice address of each and every taxpayer after his name on the tax rolls, and the Comptroller shall hereafter provide a column for the entry of such address on the sheets furnished the assessors for making up the tax rolls. [Sec. 2, Chap. 147, Acts 1915, p. 250.]

490. Duty of County or District Attorneys to File Suits.—Not later than January 1, 1917, in counties of less than 50,000 inhabitants, and not later than January 1, 1918, in counties of more than 50,000 inhabitants, and not later than June 1 of each year thereafter, it shall be the duty of the county attorney, or the district attorney, if there be no county attorney, to file and institute suits as otherwise provided by law for the collection of all delinquent taxes due at the time of filing such suit on land or lots situated in such county, together with interest, penalties and costs then due as otherwise provided by law; provided, that for the work of filing such suits, the county or district attorney shall receive a fee of \$5 for the first tract of land included in each suit, and \$1 for each additional tract included therein; provided, that where un-

improved town lots are sued upon or included in a suit with other land or improved town lots in the same town, only one such additional fee shall be added for each twenty lots or any number less than twenty; and, provided further, that in counties containing over 50,000 inhabitants such attorney's fee shall be \$2.50 for the first tract and 50 cents for additional fees as above provided.

The tax collector shall, in addition to the compensation and costs now allowed by law, be entitled for making up the delinquent record or supplements thereto where necessary under this Act the sum of 5 cents for each and every line of yearly delinquencies entered on said delinquent record or supplement, such compensation to be paid out of the general fund of the county upon the completion of said record or supplement. The tax collector shall also receive a commission of 5 per cent on the amount of all delinquent taxes collected in addition to the commissions now allowed him by law. [Sec. 3, Chap. 147, Acts 1915.]

See note under Sec. 488.

491. Duties Are Mandatory on All Officers.—The duties prescribed in this Act for the county tax collector, county and district attorneys and other officers, State and county, are hereby declared to be mandatory and shall not be construed as merely directory, and any county or State official who shall fail or refuse to perform the duties herein set out for him to perform shall be guilty of a misdemeanor, and shall be fined in any sum not less than \$100 nor more than \$1,000, and in addition thereto shall be subject to removal from office; provided, further, that no county or district officer charged with any duty under Title 126, Chapter 15, of the Civil Statutes, 1911, can make settlement with the commissioners' court of his county or the Comptroller of this State until he shall have performed the duties required of him under said Title 126, Chapter 15, of the Civil Statutes of 1911. [Sec. 3, Chap. 147, Acts 1915.]

492. Certain Laws Repealed.—Article 7707, Revised Civil Statutes of the State of Texas for 1911, and all other laws or parts of laws in conflict with this Act, are hereby expressly repealed. [Sec. 5, Chap. 147, Acts 1915.]

The compensation of five cents for each and every line of yearly delinquencies entered by tax collectors on the delinquent tax record or supplement thereto should not be considered in determining the maximum amount tax collectors should receive. Ruling Atty. General, p. 227, 1914-16.

In a suit for taxes defendant cannot urge want of authority to sue because of the absence of authorization by the commissioners' court in the absence of a verified *plead* and of proof. *State v. Cage*, 176 S. W. 928.

OPINION

Subject: Interest on Delinquent Taxes.

Mr. Henry M. Skelton,
Brownsville, Texas.

Dear Sir:

You recently submitted to us the question of whether delinquent taxes for the years since 1897 bear interest, suit having been heretofore filed for such taxes, and asked for an opinion thereon to be delivered this week, if possible.

Preliminary to deciding the main issue, we submit the following propositions:

1.

Interest on taxes cannot be collected except where the statutes expressly provide for same.

Cooley on Taxation, p. 300.

Black on Tax Titles. Secs. 151, 236, 359 and 360.

And the above is well settled to be the rule in this State.

Cave v. Houston, 65 Tex. 619.

Western Union Tel. Co. v. State, 55 Tex. 319.

Edmundson v. Galveston, 53 Tex. 157.

Galveston v. Heard, 54 Tex. 447.

Heller v. Alvarado, 20 S. W. 1003.

McCombs v. Rockport, 37 S. W. 988.

Conklin v. El Paso, 44 S. W. 879.

The reason of this rule is based on the theory that a tax is a burden, imposed on the taxpayer without his consent.

Sargent v. Tuttle (Conn.), 32 L. R. A. 822.

State v. Baldwin (Minn.), 65 N. W. 80.

Railway v. Adams, 78 Miss. 895.

People v. Railway Co., 105 Cal. 576.

A. & E. Ann. Cas., Vol. 16, 472.

2.

The question of whether the Legislature of this State has expressly provided that delinquent taxes shall bear interest, depends upon the construction to be placed upon the following Statutes:

Art. 7684, R. S. 1911.

Art. 7685, R. S. 1911.

Art. 7688, R. S. 1911.

Art. 7689, R. S. 1911.

Art. 7691, R. S. 1911.

Art. 7692, R. S. 1911.

Art. 7695, R. S. 1911.

Art. 7697, R. S. 1911.

Art. 7699, R. S. 1911.

Art. 7703, R. S. 1911.

Art. 7704, R. S. 1911.

Acts S. S. 1913, p. 25, Chapter 17.

Acts 1915 (H. B. 40), Chapter 147, p. 250.

3.

Articles 7684 to 7699 inclusive were all included in the Act of 1897 (Acts 1897, p. 138), which was amendatory of and superseded the Act of 1895 (Acts 1895, p. 53) on the subject of Delinquent Taxes.

Subsequent to 1897 six Legislatures passed laws extending the time for the redemption of lands sold under decree of court for taxes, to-wit:

Act 1899, p. 63.

Act 1901, S. S. p. 26.

Act. 1905, p. 323.

Act 1907, p. 282.

Act 1909, p. 400.

Act 1913, p. 25.

All the above mentioned Acts of the Legislature uniformly applied to sales prior to the passage of the laws, and as to such sales usually extended the time two years from the date of the passage of the act, regardless of when the sale was made. They in like manner uniformly provided that as to land thereafter sold the right of redemption should extend two years from date of sale. The latter provision was merely declaratory of the law already existing and was useless, according to our view.

The Act of 1895 as amended by the Act of 1897, in our opinion promulgated the rule of procedure and defined the substance rights of parties in the payment of taxes for the redemption of lands charged therewith, and stated the law as it continued to exist with reference to such rights, in so far as interest is concerned, up to the time of the re-enactment of the provisions thereof in the form of the Revised Statutes of 1911, unaffected by said Acts of said six Legislatures.

4.

The articles of the Revised Statutes mentioned in paragraph 2 contain the following provisions relative to interest on delinquent taxes:

Art. 7684: "The land may be sold under the judgment of the court for all taxes, interest, penalty and costs shown to be due by such assessment for any preceding year."

Art. 7688: "The commissioners' court * * * shall file a list of all lands * * * which * * * are to be sold * * * for all the taxes interest, penalty and costs. And shall cause suit to be filed * * * stating therein * * * a description of all lands or lots * * * upon which taxes and penalties have remained unpaid * * * and the total amount of such taxes, with interest computed thereon to the time fixed for the sale thereof at the rate of 6 per cent per annum, and shall pray * * * that such lands be sold to satisfy said judgment for all taxes, interest, penalty and costs."

Art. 7689: "Such officer shall sell the land * * * to satisfy the judgment, interest, penalties and costs; and, after the payment of the taxes, interest, penalty and costs adjudged against it, the remainder of the purchase price * * * shall be paid * * * to the clerk."

Art. 7691: "Where suits have been brought by the State against delinquents to recover tax due by them to the State and county the said delinquent may pay the amount of the tax, interest, penalties and all accrued costs * * * during the pendency of such suit."

Art. 7692: "The collector of taxes shall * * * seize and levy upon and sell so much personal property * * * as may be sufficient to pay his taxes,

together with the penalty above provided, interest and all costs accruing thereon."

Art. 7695: "Any delinquent * * * may redeem * * * at any time before his lands are sold by paying * * * the taxes due * * * with interest at the rate of 6 per cent per annum."

Art. 7697: "The owner * * * shall have the right * * * to redeem * * * upon the payment of the amount of taxes * * * together with all costs, penalties and interest now required by law, and also the payment of all taxes, interest, penalties and costs * * * at the time of said redemption."

Art. 7699: "The city council may direct the city attorney to file suit * * * for * * * the taxes * * * together with penalty, interest and costs."

Art. 7703: "The commissioners' court * * * shall cause the taxes to be computed * * * and in addition thereto, shall cause to be added a penalty equal in amount to what would be 6 per cent interest to the date of making said list * * *."

Art. 7704: "The said list * * * shall constitute a valid lien * * * for the full amount of taxes, penalties, officers' costs, advertising and 6 per cent interest * * *."

It appears that the provisions of Article 7684 to the effect that "land may be sold under judgment" for interest "for any preceding year" contemplates interest due on taxes before such judgment and also interest accruing on taxes becoming delinquent after the taking effect of the act.

The construction placed by the Legislature upon its own acts is material in determining the legislative intent (36 Cyc. p. 1142). And it seems that in several of the acts passed subsequent to 1897 extending the time of redemption, the Legislature considered the interest was payable on delinquent taxes prior to judgment, for in such acts the right of redemption was conditioned on the payment of "interest now required by law." See also R. S., Art. 7706.

5.

A dearth of Texas decisions in point exist relative to interest on delinquent taxes.

McCombs v. Rockport, 37 S. W. 988, was decided Nov. 19, 1896, after the passage of the Act of 1895 and before the passage of the Act of 1897. Substantially, the Act of 1895 was similar to the Act of 1897, with reference to interest on delinquent taxes. In this case the Court of Civil Appeals said: "There is no authority, that we are aware of, to allow interest on taxes from the time when they were due.* * * Unless there be express provision in the statute that interest shall be recovered upon the tax from the time when it should have been paid, the courts have no authority to allow such interest, and a judgment for the recovery of the tax should bear interest only from its date."

While it is ordinarily to be presumed that a court in rendering a decision has in view all statutes appertaining to the matter in controversy, it does not affirmatively appear that the Court of Civil Appeals in the above case, had before it the Act of 1895.

In State v. Fulmore, 71 S. W. 418, decided in 1902, the Court of Civil Appeals said: "In order to escape liability for the interest and penalties allowed by statute he should have tendered the amount of taxes legally due."

League v. State, 93 Tex. 553, 57 S. W. 34, 56 S. W. 262, 184 U. S. 156,

46, L. Ed. 478, and *Conklin v. City of El Paso*, 44 S. W. pp. 883-4, both contain expressions which indicate that the courts consider interest due on delinquent taxes prior to judgment.

6.

Based on the foregoing statutes and decisions we conclude:

(a) That the Act of 1897 has a prospective application (*Masterson v. State*, 42 S. W. 1003), and that taxes accruing for years subsequent to the taking effect of the act bear interest from the time when they become due.

(b) That the Act of 1897 applies to both State and county taxes (*Masterson v. State*, supra).

(c) The Acts of 1895 and 1897 originated in the Senate. Bills for raising revenue are required to originate in the House of Representatives (Const. Art. III, Sec. 33). Are said acts bills for raising revenue as contemplated by the Constitution? An exhaustive investigation of this question has been impossible within the limited time at our disposal, but from such study as we have been able to give it, Mr. Hawkins is inclined to the opinion that said Acts are not "bills for raising revenue" as contemplated by the Constitution, since they deal with the mode of enforcing the collection of revenue, rather than with the levying thereof, while Mr. Ray concludes otherwise.

(d) The Act of 1915 requires the payment of interest on taxes from and after the time when they become delinquent.

(e) An act which levies interest on taxes which have become due prior to the taking effect thereof, which interest increases the burden of taxation beyond the amount required by pre-existing laws, is retroactive (*League v. State*, 184 R. S. 156, 46 L. Ed. 478; *Conklin v. City of El Paso*, 44 S. W. 883), and is forbidden by our State Constitution (Art. I Sec. 16).

Truly yours,

WORTH S. RAY
L. D. HAWKINS.

CHAPTER XVIII.

COLLECTION OF POLL TAXES—WHO SUBJECT TO, AND HOW PAYMENT REGULATED.

(From Chapter 4, Title 49, R. S.)

	Sec.		Sec.
Constitutional Provisions—Qualifications for Voting; Who Qualified	493	Minor Reaching Majority Between February 1 and Election Day, Certificate	506
Poll Tax Collected from Whom; When Paid; Receipt	494	Poll Tax in Unorganized Counties	507
Method of Paying Poll Tax	495	Poll Tax Receipts, etc., Books, Furnished by Commissioners to Collector; Requisites	508
Method of Paying in Cities of Ten Thousand	496	Poll Tax Deputy to Be Appointed, etc., in Certain Counties....	509
Tax Receipt Not to Be Delivered to Agent, etc.	497	Collector May Administer Oaths, etc.	510
Candidate, etc., Not to Pay Poll Tax of Another; Provided, etc.	498	Residence Proof of, When; False Statement Reported to Grand Jury	511
No One to Give Money to Another to Pay Poll Tax	499	False Swearing to Be Reported to Grand Jury	512
No One to Keep Poll Tax of Another, Except	500	List of Poll Taxpayers, etc., Furnished by Collector to Board, and by Board to Judges; Requisites	513
Poll Tax Receipt Shall Show What	501	Poll Tax Receipts, Duplicates to Be Securely Kept, etc.	514
Poll Tax Receipt, Form of.....	502	Poll Tax Receipts, Statement of, by Collector	515
Poll Tax Receipt, etc., in Case of Removal to Another Ward of City, Over 10,000	503	Qualifications for Voting; Poll Tax in Cities of 10,000 and Over; Additional Qualifications, etc.	516
Poll Tax Receipt in Case of Removal to Another County or Precinct; Proviso	504		
Exemption Certificate in Cities Over 10,000; Requisites, etc., Form	505		

493. Constitutional Provisions—Qualifications for Voting; Who Qualified.—Every male person subject to none of the foregoing disqualifications who shall have attained the age of twenty-one years, and who shall be a citizen of the United States, and who shall have resided in this State one year next preceding an election, and the last six months within the district or county in which he offers to vote, shall be deemed a qualified elector; and every male person of foreign birth, subject to none of the foregoing disqualifications, who has, not less than six months before an election in which he offers to vote, declared his intention to become a citizen of the United States, in accordance with the Federal naturalization laws, and shall have resided in this State one year next

preceding such election and the last six months in the county in which he offers to vote, shall also be deemed a qualified voter; and all electors shall vote in the voting precinct of their residence; provided, that the electors living in an unorganized county may vote at an election precinct in the county to which such county is attached for judicial purposes; and provided further, that any voter who is subject to pay his poll tax under the laws of the State of Texas or ordinances of any city or town in this State, shall have paid said tax before he offers to vote at any election in this State, and hold a receipt showing the payment of his poll tax before the first day of February next preceding such election; and, if he is exempt from paying a poll tax and resides in a city of ten thousand inhabitants or more, he must procure a certificate showing his exemption, as required by this title. Or, if such voter shall have lost or misplaced his tax receipt, he shall be entitled to vote, upon making affidavit before any officer authorized to administer oaths that such tax was actually paid by him before said first day of February next preceding such election at which he offers to vote, and that said receipt has been lost. Such affidavit shall be made in writing and left with the judge of the election. Provided, that in any election held only in a subdivision of a county for the purpose of determining any local question or proposition affecting only such subdivision of the county, then, in addition to the foregoing qualifications, the voter must have resided in said subdivision of the county for six months next preceding such election. [R. S. Art. 2939.]

Constitution, Art. 6, Sec. 2, as amended 1901, requiring any voter who is subject to pay poll tax under the laws of the State to pay same before he offers to vote, is not added to by a legislative enactment requiring the payment of a city poll tax by a voter subject to its payment, since no tax can be levied by a city unless done under the laws of the State, and hence such enactment is not unconstitutional. *Savage v. Umphries*, 118 S. W. 893.

It was not essential in an election contest to prove that a voter owed a poll tax to both the State and county, and failed to pay the same as required by law, in order to render his vote illegal; proof that he owed it to the State, and failed to pay it, sufficing. *Id.*

A citizen of the United States, who had actually resided in the State twelve months and in the county six months prior to casting his vote was qualified, though he testified that he could not say when he decided to permanently reside in the State. *Id.*

A minor, residing for twelve months in the State with his father's consent, became a resident, and entitled to vote on attaining his majority though the father was absent from the State part of the time. *Id.*

The minor children of aliens who have been duly naturalized under the laws of the United States are citizens of the United States if dwelling in

the United States, or upon coming to and residing here. Ruling of Attorney General.

If an alien declares his intention to become a citizen of the United States, under the laws thereof, and dies before being naturalized, his minor children become citizens of the United States upon taking the oath prescribed by law. Ruling of Attorney General.

An alien, being under 21 years of age, who resided in the United States three years preceding his becoming 21 years of age, and who has continued to reside therein to the time of his making application to be admitted a citizen thereof, and has resided five years within the United States, including the three years of his minority, and has been naturalized, is entitled to vote, if otherwise qualified, notwithstanding he may have been naturalized less than six months before the election at which he offers to vote. Ruling of Attorney General.

A person does not lose his residence in a locality by being temporarily absent with his family for the purpose of sending his children to school and will be entitled to vote at the place of his permanent residence. Ruling of Attorney General.

In an election held in any subdivision or designated precinct of a county to determine a local question, a person must have resided within the particular subdivision of the county or precinct for six months before he will be entitled to vote. If, however, the election is general for the county it is not necessary that he shall have resided within the precinct for six months, but he must have resided in the county for six months preceding the election. Ruling of Attorney General.

The judges of an election have no authority to require one whose right to vote has been challenged as not being a citizen of the State to produce his naturalization papers. They have the authority to require him to make oath as to his qualification and may require him to make affidavit as to his being a naturalized citizen or having declared his intention to become a citizen. Ruling of Attorney General.

494. Poll Tax Collected from Whom; When Paid; Receipt.—The poll tax required by the Constitution and laws in force shall be collected from every male person between the ages of twenty-one and sixty who resided in this State on the first day of January preceding its levy, Indians not taxed, persons insane, blind, deaf or dumb, and those who have lost a hand or foot, or permanently disabled, excepted; which tax shall be collected and accounted for by the tax collector each year and appropriated as required by law. It shall be paid at any time between the first day of October and the first day of February following; and the person, when he pays it, shall be entitled to his poll tax receipt, even if his other taxes are unpaid. [R. S. Art. 2942.]

The payment of poll tax is a condition precedent to the right to vote in this State, and the failure to pay same within the time, and in the manner hereinafter stated, will deprive the person subject thereto of the right to vote, *but such failure will not relieve him of the liability for the poll tax*

and it will be collected as prescribed by general law. Ruling of Attorney General.

Whenever poll tax is mentioned it includes city and town poll tax, as well as State and county. Ruling of Attorney General.

495. Method of Paying Poll Tax.—If the taxpayer does not reside in a city of ten thousand inhabitants or more, his poll tax must either be paid by him in person or by some one duly authorized by him in writing to pay the same, and to furnish the collector the information necessary to fill out the blanks in the poll tax receipt. Such authority and information must be signed by the party who owes the poll tax, and must be deposited with the tax collector and filed and preserved by him. [R. S. Art. 2944.]

Failure of voter to pay poll tax in person held not to disfranchise him. *Wallis v. Williams*, 50 C. A. 623, 110 S. W. 785.

Unauthorized payment of another's poll tax by a volunteer with the latter's own money does not authorize the former to vote. *Linger v. Balfour* (Civ. App.), 149 S. W. 795.

Since payment by a citizen of his poll tax at any other place than the office of the collector does not in law constitute a payment of the tax, so as to entitle the taxpayer to a receipt on which he can vote, unless made to a deputy in a town of 10,000 inhabitants other than the county seat, payment of poll taxes by citizens not residing in such a town, on January 30, 1912, to a private agent authorized to pay the same to the tax collector and receive the receipts, which did not reach the tax collector until the 1st and 2nd days of February, 1912, did not entitle the taxpayers to receipts dated as of January 31, 1912, so as to enable them to vote thereon. *Davis v. Riley* (Civ. App.), 154 S. W. 314.

Citizens who pay their poll tax to a personal representative on January 30, but, which is not forwarded to the tax collector until the 1st or 2nd of February, are not entitled to voting receipts thereon under R. S. 2943, 2944, 2945, 2957, 7615 and 7616. *Davis v. Riley*, (T. C. A.), 154 S. W. 314.

496. Method of Paying in Cities of Ten Thousand.—In all cases where the taxpayer resides in a city of ten thousand inhabitants or more, the tax must be paid in person by the taxpayer entitled to the receipt, except as provided by this article. If a person residing in a city of ten thousand inhabitants who is subject to pay a poll tax, intends to leave the precinct of his residence before the first day of October, with the intention not to return until after the first day of the following February, and does not return before that time, he shall be entitled to vote, if possessing all other legal qualifications, by paying his poll tax or obtaining his certificate of exemption through an agent authorized by him in writing, which shall state truly his intention to depart from the precinct, the expected period of his absence, and every fact necessary to enable the tax collector to fill the blanks in his receipt. Such

authority, in fact, must be sworn to by the citizen and certified to by some officer authorized to administer oaths. It shall be deposited with the tax collector and kept in his office. [R. S. Art. 2945.]

497. Tax Receipt Not to Be Delivered to Agent, Etc.—When, in cases permitted by this title, the tax is paid by an agent, the tax receipt shall not be delivered to such agent, but shall be sent by mail to the taxpayer or kept and delivered to him in person by the tax collector. [R. S. Art. 2945a.]

Answering your question we beg to advise you that there is no law prohibiting an office holder from acting as an agent of another in the payment of poll taxes. This department has ruled, however, that neither the tax collector nor any of his deputies could act as the agent of a taxpayer for the very good reason that the tax collector and his deputies are the agents of the State in the collection of taxes due the State and therefore could not act in the capacity of agent of the taxpayer, for the duties of agent of the State and as agent of the taxpayer would be incompatible, conflicting and could not be exercised by the same person. Of course, if such officer should be a candidate for office, Article 2946 of the Revised Statutes would prohibit him from acting as such agent. The question of whether or not an incumbent of an office is a candidate to succeed himself or for another office must depend upon the facts in such case, but we answer your question as you propound it and say that the statute does not prohibit an officer from acting as the agent of a taxpayer, and that officers other than the tax collector and his deputies may so act if they are not candidates for office. Ruling of Attorney General, p. 634, 1914-16.

Person residing in a city of 10,000 inhabitants must pay their poll tax in person. Ruling of Attorney General, p. 634, 1914-16.

If exempt from poll tax they must personally appear before tax collector prior to February 1, and secure exemption certificates. Ruling of Attorney General, p. 634, 1914-16.

498. Candidate, Etc., Not to Pay Poll Tax of Another; Provided, Etc.—In no event shall any candidate for office pay the poll tax for another. And no person shall for, or on behalf of, any candidate for office or person interested in any question to be voted on, pay the poll tax for another; provided, that any person who has bought the property of another, which property is legally bound for the payment of any poll tax, may pay the poll tax of such former owner; but the collector in such case shall not issue a poll tax receipt authorizing any person to vote, but shall give the party paying the same an ordinary memorandum receipt therefor; but such memorandum receipts shall not state either the race, occupation or residence of the taxpayer. [R. S. Art. 2946.]

When a sufficient number of voters, whose poll taxes have been bought for them, vote at an election and thus make the verdict at the polls a

false verdict, the election is illegal and fraudulent and should be set aside. *Whaley v. Thomason*, 41 C. A. 405, 93 S. W. 213.

499. No One to Give Money to Another to Pay Poll Tax.—No one shall knowingly give money to a citizen to pay his poll tax. [R. S. Art. 2947.]

In view of Const. Art. 16, par. 2, and Article 6 par. 4, the provision making it a misdemeanor to lend or advance money to be used to pay poll tax, is not unconstitutional as an unreasonable abridgment of the right to contract nor of the privileges and immunities guaranteed by Const. U. S. Amend. 14, par. 1, nor as infringing the right to freely dispose of property, nor as being unreasonable, arbitrary, and in violation of Bill of Rights of Texas, par. 19, as disfranchising without due process of law nor as violating Bill of Rights of Texas, par. 3, by denying to persons of a class public privileges conferred upon other citizens, nor as a deprivation of equal protection of the laws, nor as abridging the qualifications of voters, and placing a burden not authorized by the State Constitution. *Watts v. State*, 61 C. R. 364, 135 S. W. 585.

500. No One to Keep Poll Tax of Another, Except.—No one shall keep the poll tax receipt of another person in his possession or under his control, except in cases specially authorized by law. [R. S. Art. 2948.]

This section is not unconstitutional as unduly restricting the right of suffrage, but is valid, under the Constitution, Article 6, Section 4, authorizing the Legislature to make regulations to protect and punish fraud and preserve the purity of the ballot. *Solon v. State*, 114 S. W. 349.

The act prohibiting the lending of money knowingly for the payment of poll taxes, in order to qualify the borrower to vote is not unconstitutional as a deprivation of rights without due process of law. *Id.*

An act prohibiting any person to knowingly loan money to another for the payment of poll tax in order to qualify the borrower to vote is not unconstitutional as an unreasonable abridgment of the right to contract. *Id.*

The power to make "such regulations as may be necessary to preserve the purity of the ballot" having been confided by Constitution, Article 6, Section 4, to the Legislature, without defining or limiting its discretion, such power includes judicial and executive attributes. *Id.*

501. Poll Tax Receipt Shall Show What.—Each poll tax receipt and its duplicate shall show the name of the party for whom it was issued, the payment of the tax, age, his race, the length of time he has resided in the State, the length of time he has resided in the county, the voting precinct in which he lives, except when he lives in an unorganized county, his occupation, his postoffice address, or, if he lives in an incorporated city, ward, street and number of his residence, if numbered, and the length of time he has resided in such city or town. [R. S. Art. 2949.]

502. Poll Tax Receipt, Form of.—The poll tax receipt shall be in the following form, and numbered consecutively in each book provided for in this title:

POLL TAX RECEIPT.

No.

State of Texas, county of

Received of on the day of
....., A. D. 19....., the sum of dollars,
in payment of poll tax for the year A. D. 19.....

The said taxpayer being duly sworn by me, says that he is
years old, that he resides in voting precinct No. in
county, that his race is, that he has resided in Texas
..... years, and in county years, that he is
by occupation, that his postoffice address is

(If in an incorporated city or town, a blank must be provided
for the ward, street and number of residence in lieu of his postoffice
address, and length of time he has resided in such city or town.)

All of which I certify.

(Seal)

(Signed)

Tax Collector County, Texas.

[R. S. Art. 2950.]

A poll tax receipt issued on Sunday is legal. Ruling of Attorney General, p. 630, 1914-16.

While a tax collector may attend at his office on Sunday and receive payment of poll taxes and issue receipts therefor, yet such action on his part is purely within his discretion and he cannot be compelled to attend and issue poll tax receipts. Ruling of Attorney General, p. 630, 1914-16.

An officer who is not a candidate to succeed himself or for any other office may act as agent of another in the payment of poll taxes. Ruling of Attorney General, p. 630, 1914-16.

503. Poll Tax Receipt, Etc., in Case of Removal to Another Ward or City Over 10,000.—If a citizen in a city of ten thousand inhabitants, after receiving his poll tax receipt or certificate of exemption, removes to another ward in the same city before the next election, he may vote at any general election in the ward of his new residence by presenting his poll tax receipt or certificate of exemption to the precinct election judges, or by making affidavit that it has been lost or misplaced; which affidavit shall be left with the judges and be forwarded with the election returns. But, in all such cases, if the removal was to the ward of his new residence in the same city before the certified list of voters was delivered to the precinct judges, he shall appear before the collector of taxes.

not less than five days before such election or primary election, and obtain a corrected receipt or certificate; and his name shall be added to the list of voters for the precinct of his new residence; and he shall not vote in that event, unless his name appears on the certified list of voters. [R. S. Art. 2951.]

504. Poll Tax Receipt in Case of Removal to Another County or Precinct; Proviso.—If a citizen, after receiving his poll tax receipt or certificate of exemption, removes to another county or to another precinct in the same county, he may vote at an election in the precinct of his new residence in such other county or precinct by presenting his poll tax receipt or his certificate of exemption or his written affidavit of its loss to the precinct judges of election, and stating in such affidavit where he paid such poll tax or received such certificate of exemption, and by making oath that he is the identical person described in such poll tax receipt or certificate of exemption, and that he then resides in the precinct where he offers to vote and has resided for the last six months in the district or county in which he offers to vote and twelve months in the State. But no such person shall be permitted to vote in a city of ten thousand inhabitants or more, unless he has first presented to the tax collector of his residence a tax receipt or certificate, not less than four days prior to such election or primary election or made affidavit of its loss and stating in such affidavit where he paid such poll tax or received such certificate of exemption; and the collector shall thereupon add his name to the list of qualified voters of the precinct of his new residence; and, unless such voter has done this and his name appears in the certified list of voters of the precinct of his new residence, he shall not vote. [R. S. Art. 2952.]

Under this article, no particular length of residence is required in the new precinct, where the voter moves from one precinct to another in the same county. *Linger v. Balfour* (Civ. App.), 149 S. W. 795.

If, after payment of your poll tax, you move from one county to another, and in the county to which you remove, you reside in a city of 10,000 inhabitants, you will not be allowed to vote in the precinct of your new residence unless you present your poll tax receipt or certificate of exemption, or affidavit of its loss, to the tax collector of the county of your new residence four days prior to the election at which you offer to vote, and have him add your name to the certified list of voters of the precinct of your new residence. Ruling of Attorney General.

If at the time you became subject to a poll tax you resided in a city of 10,000 inhabitants and afterwards remove to another county and do not reside in a city of 10,000 inhabitants at the time you desire to pay your poll tax, you will, nevertheless, be required to pay your poll tax in person to the tax collector of the county wherein you resided in the city of 10,000 inhabitants at the time you became subject to the poll tax. Ruling of Attorney General.

If at the time you became subject to the poll tax you did not reside in a city of 10,000 inhabitants, but removed from this county to another county wherein you reside in a city of 10,000 inhabitants you can pay your poll tax in the county from which you removed through an agent, appointed in writing, as above explained. Ruling of Attorney General.

Your poll tax must be paid in the county in which you resided on the first day of January of the year for which it is levied. Ruling of Attorney General.

505. Exemption Certificate in Cities Over 10,000; Requisites, Etc.; Form.—Every person who is exempted by law from the payment of a poll tax and who is in other respects a qualified voter, who resides in a city of ten thousand inhabitants or more, shall, after the first day of October and before the first day of February following, before he offers to vote, obtain from the tax collector of the county of his residence a certificate showing his exemption from the payment of a poll tax. Such exempt person shall, on oath, state his name, county of his residence, occupation, race, age, the length of time he has resided in Texas, the length of time he has resided in the county and the length of time he has resided in the city, and the ward and voting precinct in which his residence is located, the street and number of his residence, if numbered. He shall also state the grounds on which he claims exemption from the payment of a poll tax. Such certificate shall be detached from said book, leaving thereunder a duplicate carbon or other copy thereof which shall contain the same description; and the original shall be delivered, bearing its proper number, to the citizen in person to identify him in voting. Certificates of exemption for each precinct shall be numbered consecutively, beginning at one. They shall be in the following form:

CERTIFICATE OF EXEMPTION FROM POLL TAX.

No.

State of Texas, county of

I,, tax collector for said county, Texas, do hereby certify that.....personally appeared before me on the.....day of.....A. D....., and being sworn, said his name is....., that his race is....., that he is.....years old, that his occupation is....., that he has resided in Texas for.....years, in the county of.....for.....years, and in the city of.....for.....years, that he now resides in precinct No....., in ward No.....; and on.....street, and in house No.....(if numbered); that he is exempt from the payment of

the poll tax by reason of _____, and that he is a qualified voter under the Constitution and laws of Texas.

(Seal)

(Signed) _____

Tax Collector _____ County, Texas.

[R. S. Art. 2953.]

School Law, par. 103 (Art. 3093), seems to apply only to special elections, and does not attempt to prescribe how the population is to be ascertained in procuring the certificate of exemption as required by Section 19 of this law (Art. 2953). *McCormick v. Jester*, 53 C. A. 306, 115 S. W. 287.

506. Minor Reaching Majority Between February 1, and Election Day, Certificate.—Every male person who will reach the age of twenty-one years after the first day of February and before the day of a following election at which he wishes to vote, and who possesses all the other qualifications of a voter shall be entitled to vote at such election, if he has obtained a certificate of exemption from the county collector before the first day of February, which shall specify the day when he will be twenty-one years old, and contain all the other requisites of a certificate of exemption. Before the certificate of exemption shall issue, the applicant therefor shall make written affidavit of his age, to be administered and certified to by the county collector, who shall file and preserve the same. [R. S. Art. 2954.]

It was error to sustain exception to an allegation in petition contesting an election that certain voters named arrived at twenty-one years of age after January 1st of the year in which election was held and had failed to secure certificates of exemption as required by this section, because the contestants had a right to show this fact. *Savage v. Umphries* (Civ. App.), 118 S. W. 900, 901.

A citizen who became of age June 29, 1909, was disqualified to vote at an election held November 8, 1910, where he failed to appear before the tax collector before February 1, 1910, to make the affidavit and secure the certificate of exemption required by this article, though he paid the poll tax after the year 1910, to which he was not subject, and which had not been assessed against him. *Linger v. Balfour* (Civ. App.), 149 S. W. 795.

A person, who became of age June 11, 1909, was disqualified to vote November 8, 1910, where he did not make affidavit and secure the certificate of exemption from poll tax, required by this article. *Id.*

A person who became of age July 20, 1909, was disqualified to vote November 8, 1910, where he failed to make affidavit and secure a certificate of exemption from poll tax, as required by this article. *Id.*

507. Poll Tax in Unorganized Counties.—The poll tax due from citizens of unorganized counties shall be paid in the county to which

the unorganized county is attached for judicial purposes. [R. S. Art. 2955.]

508. Poll Tax Receipt, Etc., Books, Furnished by Commissioners to Collector; Requisites.—The commissioners' court of each county shall, before the first day of October every year, furnish to the county tax collector a blank book for each voting precinct, which shall be marked with the name and number of the precinct for which it is intended. Each book shall contain a sufficient number of blank poll tax receipts for each voting precinct not in a city of ten thousand inhabitants or more, and not exceeding three hundred and fifty blank poll tax receipts and certificates of exemptions for each precinct in a city of ten thousand inhabitants or more, of which not more than sixty shall be certificates of exemptions, and a greater or less number of each in the same proportion when sufficient for the voters of the precinct. Each receipt and certificate shall, in each such book, be bound immediately over a duplicate copy thereof; which duplicate copy, when filled out, shall correspond with the receipt or certificate in its number, the name, length of residence in the State or county, the voting precinct, race, occupation and postoffice address of the citizen to whom the tax receipt or certificate of exemption is given. If the voting is in a city, the receipt or certificate and duplicate must show the ward, street and number, if numbered, of the citizen's residence (in lieu of postoffice address); and the length of time he has resided in such city. The receipts and certificates shall be numbered in consecutive order. Similar blank books of poll tax receipts shall be furnished to each unorganized county attached to such county for judicial purposes, except that the voting precinct need not appear therein. When the tax receipt or certificate is delivered to the citizen, it shall be detached from the book and retained by him for his future use and identification in voting. [R. S. Art. 2956.]

509. Poll Tax Deputy to Be Appointed, Etc., in Certain Counties.—In all counties containing a city of ten thousand inhabitants or more, other than the county seat of such county, it shall be the duty of such collector to have a duly authorized and sworn deputy to represent him for the purpose of accepting poll taxes and giving receipts therefor, who shall keep his office for such purpose at some convenient place in such city during the entire month of January of each year, and he shall publish four weeks notice of the authority of such deputy and the location of the office. [R. S. Art. 2957.]

Notwithstanding Article 224, P. C., it is the duty of the tax collector to issue a poll tax receipt to a voter offering to pay the same in time, al-

though the receipt be withheld till after February 1st, and the collector has no discretion in the matter even though he may be in doubt as to the right of the payer to vote. *Parker v. Busby* 170 S. W. 1042.

Under Article 7354 R. S. a poll tax is a tax on the person and Article 7567 does not require as a condition precedent to the right of the tax payer to compel the collector to assess the amount levied by law as a poll tax, the assessment of said poll tax. *Parker v. Busby*, 170 S. W. 1042.

The tax collector has no authority to appoint a deputy to collect poll tax except in cities of 10,000 inhabitants or more. Ruling of Attorney General.

The county tax collector would have the authority to appoint duly authorized deputies to be stationed at different points in a city of 10,000 inhabitants or over, other than the county seat of such county, for the purpose of collecting poll tax and give receipts therefor. These deputies, however, except the one provided for in this article, would have the authority to collect property taxes as well as poll taxes. Ruling of Attorney General.

510. Collector May Administer Oaths, Etc.—The county collector is authorized to administer oaths and certify thereto under the seal of his office in every case where an oath is required in complying with any portion of this title connected with his official duties. [R. S. Art. 2958.]

511. Residence, Proof of, When; False Statement Reported to Grand Jury.—If the county collector does not personally know one who applies to pay his poll tax or secure his certificate of exemption from its payment, as being a resident in the precinct which such person claims as that of his residence, it shall be the duty of such collector to require proof of such residence; and, if he has reason to believe such person has falsely stated his age, occupation, precinct of his residence, or the length of his residence in the State, county and city, he shall require proof of such statement; and, if on inquiry, he is satisfied that said person has sworn falsely, he shall make a memorandum of the words used in such statement, and present the same to the foreman of the next grand jury. [R. S. Art. 2959.]

512. False Swearing to Be Reported to Grand Jury.—Whenever the county collector shall have reason to believe that a citizen who has paid his poll tax or received a certificate of exemption has sworn falsely to obtain the same, he shall report the facts upon which such belief is founded to the next grand jury organized in the county. [R. S. Art. 2960.]

513. Lists of Poll Taxpayers, Etc., Furnished by Collector to Board, and by Board to Judges; Requisites.—Before the first day of April every year, the county collector of taxes shall deliver to the board that is charged with the duty of furnishing election supplies

separate certified lists of the citizens in each precinct who have paid their poll tax or received their certificates of exemption, the names being arranged in alphabetical order, and to each name its appropriate number, as shown by the duplicates retained in his office, with a description of the voter as to his residence, his voting precinct, length of his residence in the State and county, his race, occupation and postoffice address if not in a city of more than ten thousand inhabitants. If the county has any unorganized county or counties attached to it for judicial purposes, the collector of taxes shall also deliver to said board, before the first day of April of each year, as many certified lists of the electors resident in such unorganized county or counties who have paid their poll tax or received the certificate of exemption as there are election precincts in his county; which lists shall be identical with those of poll taxpayers in his own county, except that the voting precinct shall not be stated. The tax collector of any county containing a town or city of more than ten thousand inhabitants shall also furnish to said board, not less than four days prior to any primary or general election, supplemental lists in the form herein prescribed, of all poll taxpaying voters who have, since paying their poll tax, removed to each voting precinct in each such city or town in the county from another county or in another precinct in the same county. Said board shall furnish each presiding judge of a precinct the certified list and supplemental list of the voters of his precinct at the time when he furnishes other election supplies. Such certified lists of qualified voters shall be in the following form:

VOTERS IN ELECTION PRECINCT.

No.
 Name
 Precinct
 Age
 Length of residence in State.....
 Length of residence in county.....
 Occupation
 Race
 Length of residence in city and ward.....
 Street and No. of residence.....
 Postoffice address
 [R. S. Art. 2961.]

514. Poll Tax Receipts, Duplicates to Be Securely Kept, Etc.—
 The county collector shall keep securely in a safe place the dupli-

cates for each precinct from which such poll tax receipts and certificates of exemption have been detached; and they must remain there except when taken out for examination, which must always be done in his presence, but they shall be burned by the county judge at the expiration of three years. [R. S. Art. 2962.]

515. Poll Tax Receipts, Statement of, by Collector.—On or before the tenth day of March of each year, the collector of taxes shall make statement to the county clerk showing how many poll tax receipts he has issued; said statement shall show how many poll tax receipts have been issued and to whom issued in each voting precinct in the county; and such statement shall become a record of the county commissioners' court. [R. S. Art. 2963.]

516. Qualifications for Voting; Poll Tax in Cities of 10,000 and Over; Additional Qualifications, Etc.—No one shall vote in any primary election, unless he has paid his poll tax or obtained his certificate of exemption from its payment, in cases where such certificate is required, before the first of February next preceding, which fact must be ascertained by the officers conducting the primary election by an inspection of the certified lists of qualified voters of the precinct, and of the poll tax receipts or certificates of exemption; nor shall he vote in any primary election except in the voting precinct of his residence; provided, that, if this receipt or certificate be lost or misplaced, or inadvertently left at home, that fact must be sworn to by the party offering to vote; and provided, further, that the requirements as to presentation of the poll tax receipt, certificate of exemption or affidavit shall apply only to cities of ten thousand population or over as shown by the last United States census; provided, that the executive committee of any party for any county may prescribe additional qualifications for voters in such primaries, not inconsistent with this title. [R. S. Art. 3093.]

This section (Art. 3093), seems to apply only to special elections and does not attempt to prescribe how the population is to be ascertained in procuring the certificate of exemption as required by Section 19 of this law (Art. 2953). *McCormick v. Jester*, 53 C. A. 306, 115 S. W. 287.

A person otherwise qualified as a voter, who resides within a county, political subdivision or defined district, and who owned property in said county, district, etc., subject to taxation against him on January 1st next preceding the election, is entitled to vote at an election held under the provisions of Article 628, Revised Statutes of 1911. *Ruling of Attorney General*, p. 192, 1912-14.

Party moving from city not requiring poll tax to city requiring same may vote without poll tax receipt. *Ruling of Attorney General*, p. 193, 1912-14.

Minor becoming of age in January must have exemption certificate. Ruling of Attorney General, p. 193, 1912-14.

Any person who owns an interest in any property, whether the title is in his name or whether same is rendered for taxes in his name; if he owns the interest in the property, he would be entitled to vote. It must not be a mere expectancy, but must be an interest. Ruling of Attorney General, p. 653, 1912-14.

VOTING IN PRIMARY ELECTIONS.

(1) You cannot vote at a primary election unless you are 21 years old, have resided in the State for twelve months and in the county in which you offer to vote for six months, and paid your poll tax, State, county and city or town, prior to February 1, or received a certificate of exemption, if you are exempt and a certificate is required.

(2) You are not entitled to vote at a primary election if you are not 21 years old at the time you offer to vote, notwithstanding you may become 21 years old on or before the date of holding the general election.

(3) The ballot of primary elections will be such as has been in use in this State for such elections except that it will be headed "Official Ballot." You must secure same from the election judges, and prepare same at the place prepared for that purpose by the election officers.

(4) You vote by marking out all the names for whom you do not desire to vote.

(5) The name of the presiding judge of the election will be written on the opposite side of your ballot. After preparing your ballot, fold it so that his name will be visible, and deliver it to one of the election judges.

(6) You cannot carry with you to the polling place any paper or ballot on which is marked or printed the names of anyone for whom you have agreed to vote, or for whom you have been requested to vote, and any judge of the election may require you to make affidavit that you have no such paper or ballot, and if you have such you will be required to deliver it to the officers of the election before you will be allowed to prepare your ballot.

(7) If you need any assistance in the preparation of your ballot, it must be given by the election judges, and a heavy fine and imprisonment is imposed upon any judge or clerk of an election, who by word, writing, sign or token indicates how he desires you to vote.

(8) The fact that a person will have resided in the county six months at the time of the general election in November, will not authorize him to vote in the primary in July unless he will have resided six months in the county at the date of the primary. Ruling of Attorney General.

DIFFERENCE IN RULES GOVERNING GENERAL AND PRIMARY ELECTIONS.

(1) The rules governing the holding of primary elections govern the holding of general elections, with the following exceptions:

(a) The judges and clerks are appointed by the commissioners' court and shall be chosen from opposing political parties, the presiding judge to be of the political party which cast the largest vote at the last general election.

(b) A supervisor may be nominated by the chairman of each political party or three members of the executive committee thereof. The nomination must be made not less than five days before the election, and must be certified to the county judge, and he shall endorse his approval thereon.

(c) No person shall be allowed to vote in any election precinct, regardless of whether it is in a city of 10,000 inhabitants or not, unless he presents his poll tax receipt or certificate of exemption, or an affidavit that it has been lost or misplaced.

(d) The returns of the election shall be made to the county judge, instead of the chairman of the political parties. The ballot boxes sealed as in primary elections, and No. 3 containing a poll list and tally sheet, and should be delivered to county clerk as in primary elections.

(e) The election supplies are delivered to the presiding officer by the sheriff, and furnished by the county judge, county clerk and sheriff, constituting a board, and paid for by the commissioners' court. Ruling of Attorney General.

CHAPTER XIX.

SPECIAL SCHOOL TAXES AND BOND ISSUES FOR SCHOOL PURPOSES.

(From Provisions of Title 48, R. S.)

	SEC.		SEC.
Powers of Commissioners' Courts to Levy Special Tax.....	517	Who May Vote in School Tax Elections	524
Manner of Levying Special Tax.....	518	Powers and Duties of Assessor and Collector of District.....	525
Levy of Bond Tax.....	519	Assessment and Collection of Special School Taxes by County Officers	526
Tax Must Be Levied Until Bonds Are Paid	520	School Trustees Authorized to Invest Sinking Funds	527
Power of School Trustees—May Issue Bonds	521	Refunding Bonds May Be Issued..	528
Election to Be Ordered by Trustees, in What Manner.....	522	Second Election May Be Held to Reduce Tax, etc.	529
Public Notice of Election Shall Be Given	523		

517. Power of Commissioners' Court to Levy Special Tax.—The commissioners' court of any county in this State shall have power to levy a special tax for the further maintenance of public free schools, and the erection within each school district of a schoolhouse or schoolhouses; provided, a majority of the qualified property taxpaying voters of the district, voting at an election to be held for the purpose, shall vote such tax, not to exceed in any year fifty cents on the one hundred dollars valuation of the property subject to taxation in such district; provided, that all property assessed for school purposes shall be assessed at the rate of value of property as said property is assessed for State and county purposes. [R. S. Art. 2827, amended Acts 1909.]

518. Manner of Levying Special Taxes.—The county commissioners' court shall, at the time of levying the taxes for county purposes, also levy upon such school district the rate of tax said district has voted upon itself, or, if the proposition shall have been, "for a school tax not exceeding fifty cents on the one hundred dollars valuation of taxable property in the district," the commissioners' court shall levy such a rate within that limit as shall have been determined by the board of trustees of said district and the county superintendent, and certified to said court by the county superintendent. It shall be the duty of the tax assessor to assess said tax as other taxes are assessed, and to make an abstract showing the amount of special taxes assessed against each school dis-

trict in his county, and to furnish the same to the county superintendent, on or before the first day of September of the year for which such taxes are assessed; and the taxes levied upon the real property in said districts shall be a lien thereon, and the same shall be sold for unpaid taxes in the manner and at the time of sales for State and county taxes. A special tax voted in any district after the levy of county taxes shall be levied at any meeting of the commissioners' court prior to the delivery of the assessment rolls by the assessor. The tax assessor shall assess, and the tax collector shall collect, said district taxes as other taxes are assessed and collected. The tax assessor shall receive a commission of one-half of one per cent for assessing such tax, and the tax collector a commission of one-half of one per cent for collecting the same. The tax collector shall pay all such taxes to the county treasurer; and said treasurer shall credit each school district with the amount belonging to it, and pay out the same in accordance with the law. [R. S. Art. 2836.]

A petition in a suit to recover a special school tax held insufficient, as not alleging that the voters at the election authorizing the tax were taxpayers within the district. *Miller v. Crawford Independent School Dist.*, 26 C. A. 495, 63 S. W. 894.

519. Levy of Bond Tax.—When the commissioners' court shall provide for the issuance of such bonds, and each year thereafter so long as the bonds or any of them are outstanding, said court shall levy a tax not to exceed twenty-five cents on the one hundred dollars valuation of taxable property of said school district, sufficient to pay the interest on the bonds and to produce a sinking fund, which, together with the interest thereon when placed at interest, shall be sufficient to pay the principal of said bonds at maturity. The rate of such tax shall be determined by the trustees of the district and the county superintendent, and certified by the county superintendent to the commissioners' court; provided, that the rate of the bond tax, together with the rate of special local tax of the district for the maintenance of schools therein, shall never exceed fifty cents on the one hundred dollars valuation of taxable property of said school district; but, if the rate of bond tax certified by the county superintendent to the commissioners' court, together with the rate of maintenance tax previously voted in the district, shall at any time exceed fifty cents on the one hundred dollars, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and fifty cents. Said school district bond tax

shall be assessed and collected in the manner provided by law for the assessment and collection of the special local tax for the maintenance of public free schools; provided, that the rate of school tax certified to the commissioners' court by the county superintendent shall be the rate to be levied by the commissioners' court in the school district, until a change in such rate shall be recommended by the county superintendent and board of trustees of the district within the limits prescribed by law. [R. S. Art. 2841.]

520. Tax Must Be Levied Until Bonds Are Paid.—After said bonds shall have been issued and sold, and said tax shall have been levied sufficient to pay said bonds and the interest thereon as provided above, it shall not be lawful to hold an election in said district to determine whether or not said tax shall be discontinued or lowered until said bonds, together with the interest thereon, shall have been fully paid; nor shall the limits and boundaries of said common school district ever be decreased until after said bonds and the accrued interest thereon shall have been fully paid. [R. S. Art. 2842.]

521. Power of School Trustees—May Issue Bonds.—Trustees of a district that has been, or may hereafter be, incorporated under general or special laws, for school purposes only, shall have power to levy and collect an annual ad valorem tax not to exceed fifty cents on the one hundred dollars valuation of taxable property of the district, for the maintenance of schools therein, and a tax not to exceed twenty-five cents on the one hundred dollars for the purchase of sites and the purchasing, construction, repairing or equipping public free school buildings within the limits of such incorporated districts; provided that the amount of maintenance tax, together with the amount of bond tax of the district, shall never exceed fifty cents on the one hundred dollars valuation of taxable property. Said trustees shall have power to issue coupon bonds of the district for building purposes, to be made payable not exceeding forty years from date, in such sums as they shall deem expedient, to bear interest not to exceed five per cent per annum; provided, that when such buildings are to be wooden the bonds herein provided for shall not run for a longer period than twenty years; provided, that the aggregate amount of bonds issued for the above named purpose shall never reach such an amount that the tax of twenty-five cents on the hundred dollars valuation of property in the district will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity; and provided, further, that no such tax shall be levied and no such

bonds issued until after an election shall have been held, wherein a majority of the taxpaying voters voting at said election shall have voted in favor of the levying of said tax, of the issuance of said bonds, or both, as the case may be; provided, that the specific rate of tax need not be determined in the election. [R. S. Art. 2857.]

See *Hamilton v. Bowers* (Civ. App.), 146 S. W. 629.

Agricultural lands may be included, and it is immaterial that the town or village is not in or near the center of the incorporated territory. *State v. Allegrree*, 3 C. A. 437, 22 S. W. 289.

Territory not exceeding four miles square may be included in the incorporation, regardless of whether it includes agricultural lands or not. *Id.*

To constitute a public school the provisions of the statute must be pursued. *Ussery v. City of Laredo*, 65 Tex. 406.

The boundaries of the proposed incorporation should be designated in the petition. The boundary cannot be changed in the order of the judge. *Furh v. State*, 6 C. A. 221, 24 S. W. 1126.

Under this article, held, that the purpose of the election is to determine whether a district tax shall be levied for maintaining such schools, and the payment of the bonds proposed to be issued for that purpose, not to exceed the constitutional and statutory limit, and the specific rate for maintenance and bond purposes is to be fixed by the trustees within such limit. *Itasca Independent School Dist. v. McElroy* (Civ. App.), 124 S. W. 1011.

Under this article, as authorized by the Constitution, Art. 7, Par. 3, adopted in 1908, the taxpaying voters of an independent school district may, by a majority vote, authorize the issuance of school district bonds for building purposes, and at the same election authorize a maintenance tax, the aggregate tax for both purposes not being in excess of 50 cents on the \$100 valuation, and it is not necessary at such elections that the rate of tax be determined. *Id.*

Under this article and Article 2841, providing that, when bonds are voted, the maintenance shall be reduced to the difference between the rate of the bond tax and 50 cents, it is not material to the validity of a maintenance tax and bond issue that they were voted at different times, though the tax is apportioned 25 cents on the \$100 to the maintenance of schools and 25 cents to the payment of the bonds. *Chambers v. Cook* (Civ. App.), 132 S. W. 865.

Under this article, an election to authorize such tax is not void because the order and notice of such election failed to state that the rate would be 50 cents on the \$100 property valuation, or less than that amount. *Itasca Independent School Dist. v. McElroy* (Civ. App.), 124 S. W. 1011.

The levy of a tax by a school district of 75 cents on the \$100 valuation of property held void as in excess of the 20 cents on the \$100 authorized by the Constitution, Art. 7, Par. 3. *Hutchinson v. Patching*, 103 Tex. 497, 129 S. W. 603.

Where the board of trustees of an independent school district in levying a tax for the maintenance of schools and for the payment of bonds fails to appoint a board of equalization or to make a separate tax roll for the benefit of the school district as required by law, the tax is invalid; the

fact that each individual's name was placed on the county tax rolls, and the county commissioners had theretofore passed on the rolls as a board of equalization, not meeting the requirements of the law. *Chambers v. Cook* (Civ. App.), 132 S. W. 865.

Where the act authorizing a school tax is void, valid bonds cannot be issued in anticipation of a levy of taxes under the act. *Patching v. Hutchinson* (Civ. App.), 118 S. W. 878.

522. Election to Be Ordered by Trustees in What Manner.—The election provided for in the preceding article may be ordered by the trustees on the written petition of at least twenty tax-paying voters of said town or village, at any time not less than thirty days from the date of the order; which order shall state the date and place when said election shall be held, the amount of tax to be levied, or the amount of bonds to be issued, as the case may be; and the trustees shall also name and appoint therein the manager or managers of said election, which shall be held as nearly as may be possible in conformity with the general election law of the State; provided, that, when a proposition to levy such a tax shall be defeated, no election for that purpose shall be ordered until after the expiration of one year. [R. S. Art. 2858.]

The boundaries of the proposed corporation should be designated in the petition of the voters. *Furrh v. State*, 6 C. A. 221, 24 S. W. 1126.

There is no material difference in the requisites of the petition and order for the election. In the one the amount of the tax to be voted on must be stated; in the other the amount of the tax to be levied or the amount of the bonds to be issued. *Parks v. West* (Civ. App.), 108 S. W. 466.

In independent school districts elections to determine the questions of issuing bonds and special taxation should be ordered by the school trustees. *Itasca Independent School Dist. v. McElroy* (Civ. App.), 124 S. W. 1011.

An election by a school district to determine whether a tax should be levied and bonds issued held valid. *Boesch v. Byrom*, 37 C. A. 35, 83 S. W. 18.

523. Public Notice of Election Shall Be Given.—Public notice of said election shall be given by the said trustees, by placing notices of the same in three different portions of such incorporated district at least twenty days before said election; which notice shall state the time and place of the election, and the amount of the tax to be levied, or the amount of bonds to be issued, or both, as the case may be. [R. S. Art. 2859.]

524. Who May Vote in School Tax Elections.—No person shall vote at said election unless he be a qualified voter under the Constitution and laws of this State, and a taxpayer in such incorporated district; and those in favor of the levying of such tax, or the issuance of such bonds, shall write or print upon their ballots,

"For the Tax," and those against the levying of such tax, or the issuance of such bonds, shall write or print on their ballot, "Against the Tax"; and due returns thereof shall be made to said trustees within ten days, and the result thereof shall be recorded by said trustees in a well bound book to be kept for that purpose. [R. S. Art. 2860.]

525. Powers and Duties of Assessor and Collector of District.—The assessor and collector of taxes of the district shall have the same power and shall perform the same duties with reference to the assessment and collection of taxes for free school purposes that are conferred by law upon the city marshal of an incorporated town or village, and he shall receive such compensation for his services as the board of trustees may allow, except in cities and towns otherwise provided for, not to exceed four per cent of the whole amount of taxes received by him; and he shall give bond in double the estimated amount of taxes coming annually into his hands, payable to the president of the board or his successors in office, conditioned for the faithful discharge of his duties, and that he will pay over to the treasurer of the board all the funds coming into his hands by virtue of his office as such assessor and collector; provided, that, in the enforced collection of taxes, the board of trustees shall perform the duties which now devolve in such a case upon the city council of an incorporated city or town; the president of the board of trustees shall perform the duties which devolve in such a case upon the mayor of an incorporated city or town; and the county attorney of the county in which the independent school district is located shall perform the duties which in such a case devolve upon the city attorney of an incorporated city or town under the provisions of Chapter 103, General Laws, Regular Session, Twenty-fifth Legislature. [R. S. Art. 2861.]

526. Assessment and Collection of Special School Taxes by County Officers.—When a majority of the board of trustees of an independent school district prefer to have the taxes of their district assessed and collected by the county assessor and collector, same shall be assessed and collected by said county officers, and turned over to the treasurer of the independent school district for which such taxes have been collected; provided, that the property of such districts having their taxes assessed and collected by the county assessor and collector, shall not be assessed at a greater value than that assessed for county and State purposes; provided, further, that when the county assessor and county collector are required to assess and collect the taxes of independent school dis-

tricts, they shall, respectively, receive one per cent for assessing and collecting same. [R. S. Art. 2862.]

School Law, par. 57 (Art. 2827), held to control Section 165 (Arts. 2862, 2881, 2891). *Gulf, C. & S. F. R. Co. v. Blum Independent School District* (Civ. App.), 143 S. W. 353.

Art. 2827, expressly declaring that all assessments of property for taxes under the bill shall be made at the valuation fixed for State and county purposes, being an express declaration, controls this article. *Gulf, C. & S. F. R. Co. v. Blum Independent School Dist.* (Civ. App.), 143 S. W. 353.

Under this article, held that, where an assessor appointed by the school board thereunder served two years, and, upon his declining to serve longer, the board provided for the assessment by the county assessor, the appointment of the county assessor had the effect of declaring vacant the office of the assessor regularly appointed so as to make the effect of the appointment the same as if it had been made in the first instance, and render invalid assessments not based on the same valuation as that for county and State purposes. *Underwood v. Childress Independent School Dist.* (Civ. App.), 149 S. W. 773.

Under Art. 2827, which authorizes the levying of a special tax for school purposes, with the proviso "that in all assessments of property for taxing purposes * * * the property shall be assessed at the valuation fixed for said property for State and county purposes," as amended, and this article, held, that the amendment of the act did not remove the right to have the valuation of property limited to that fixed for county and State purposes where the assessment was made by the county assessor. *Id.*

The right given under this article to have property assessed for school purposes by a county assessor assessed at the same valuation as that for State and county purposes, is fixed by the act of assessment which is judicial and cannot thereafter be removed by the fact that the ministerial act of collection was by other than the county collector. *Underwood v. Childress Independent School Dist.* (Civ. App.), 149 S. W. 773.

527. School Trustees Authorized to Invest Sinking Funds.—Trustees of towns and villages that have been, or may hereafter be, incorporated for school purposes only, that have issued, or may hereafter issue, bonds under the provisions of this chapter, may, as it accumulates, invest the sinking funds in bonds of the United States, of the State of Texas, of counties of this State, or in bonds of cities and towns and independent school districts of this State, that have been approved by the Attorney General. [R. S. Art. 2863.]

528. Refunding Bonds May Be Issued.—Where bonds have been legally issued, or may be hereafter issued, by any town or village incorporated for free school purposes only, new bonds, bearing the same or a less rate of interest, may be issued in conformity with this chapter in lieu thereof; provided, no election shall be necessary to authorize the issuance of such new bonds; and provided, further, that the State Treasurer shall, upon order of the State

Board of Education, exchange bonds not matured held by him for the permanent school fund for the new refunding bonds issued by the same incorporation under the provisions of this chapter, in case the rate of interest on the new bonds is not less than the rate of interest on the bonds for which they are exchanged. [R. S. Art. 2864.]

529. Second Election May Be Held to Reduce Tax, Etc.—All incorporated school districts for free school purposes only, within the State of Texas, which have heretofore held elections wherein it has been determined by a majority vote at such elections that a tax of not exceeding fifty cents on the one hundred dollars valuation of all property within such districts shall be levied for the maintenance of public schools within such districts and subsequent to such election another election is held in such school district for the purpose of determining whether or not bonds shall be issued for school building purposes, or the equipment of school buildings and the levy of a tax sufficient to pay interest and sinking fund on such bonds, such second election shall reduce the tax authorized to be levied in the first election not to exceed fifty cents on the one hundred dollars valuation to such an amount not exceeding twenty-five cents tax on the one hundred dollars valuation of all property within said district as may be necessary to raise funds to pay interest and sinking fund on such bonds so long as such bonds are an outstanding obligation against such district; provided that in no event the total tax authorized for such district shall exceed fifty cents on the one hundred dollars valuation of property contained in such district, and in no event shall the tax of twenty-five cents on the one hundred dollars valuation for the purpose of paying interest and sinking fund on outstanding bonds of such a district be reduced because of the maintenance tax blow [below] such an amount as is necessary to raise a sufficient sum to pay interest and sinking fund on such outstanding bonds. [Acts 1911, p. 200, Sec. 5; R. S. Art. 2864a.]

CHAPTER XX.

LEVY AND COLLECTION OF CITY SCHOOL TAXES.

(From Chapter 17, Title 48, R. S.)

	SEC.	SEC.
Question of Local Maintenance Tax to Be Submitted.....	530	annually 534
Two-thirds Majority in Favor of Tax Necessary	531	School Trustees Determine Annual Rate 535
Power of Council to Order Election for Local Tax	532	Manner of Assessment and Collection 536
Duty of Council to Levy Tax, When	533	Funds to Be Turned Over to School Treasurer 537
Manner of Levying Tax Annually		Extension of City Limits for School Purposes 538

530. Question of Local Maintenance Tax to Be Submitted.—After a city or town has assumed control of the public free schools within its limits, the council or board of aldermen shall also submit the question to the property taxpayers as to whether or not the additional amount as provided for hereinafter shall be raised by taxation. [R. S. Art. 2875.]

531. Two-thirds Majority in Favor of Tax Necessary.—If, at an election held for that purpose at which none but property taxpayers, as shown by the last assessment rolls, who are qualified voters of such city or town, shall vote, two-thirds of those voting shall vote in favor thereof, such an amount shall be raised by taxation not to exceed one-half of one per cent, in addition to the pro rata of the available school fund received from the State, as may be necessary to conduct the schools for ten months in the year. [R. S. Art. 2876.]

NOTE.—Does not apply where special charter of city provides for majority vote only.

532. Power of Council to Order Election for Local Tax.—The city or town council, or board of aldermen of any city, town or village, whether incorporated under any act of the Congress of the Republic, or the Legislature of the State of Texas, or under any act of incorporation whatever, shall have power by ordinance to annually levy and collect not exceeding one-half of one per cent ad valorem taxes for the support and maintenance of public free schools in the city or town where such city or town is a separate and independent school district; provided, that no such tax shall

be levied until an election shall have been held at which none but property taxpayers, as shown by the last assessment rolls, who are qualified voters of such city or town, shall vote, and two-thirds of those voting shall vote in favor thereof. The proposition submitted may be for a tax not exceeding one-half of one per cent, or may be for a specific per cent. One election, and no more, shall be held hereafter in any one calendar year to ascertain whether a school tax shall be levied. If the proposition is carried, the school tax shall be continued to be annually levied and collected for at least two years, and thereafter, unless it be discontinued at an election held to determine whether the tax shall be continued or discontinued, at the request of fifty property taxpayers of such city or town. When the tax is continued, no election to discontinue it shall be held for two years; when the tax is discontinued, no election to levy a tax shall be held during the same year. [R. S. Art. 2877.]

Charter of municipal corporations held not to require city council to make provisions for the redemption of bonds issued for purchasing grounds and building schools out of the tax of one-half of 1 per cent authorized to be levied for the support of the school. *Kennedy v. Birch* (Civ. App.), 74 S. W. 593.

533. Duty of Council to Levy Tax, When.—If the vote of the taxpayers is in favor of said tax, then it shall be the duty of the council or board of aldermen, annually thereafter, to levy upon the taxable property in the limits of such city or town, in accordance with the usual assessment of taxes for municipal purposes, such additional tax as may be necessary for the support of the schools for ten months in the year, not to exceed one-half of one per cent. [R. S. Art. 2878.]

534. Manner of Levying Tax Annually.—In a city or town that has assumed the exclusive control of the public free schools within its limits and has decided, under the laws providing therefor, that a special tax shall be levied for the support of such public free schools, the mayor and council or board of aldermen of such city or town shall annually assess and levy such tax by ordinance duly passed and approved in the same manner as is required in the assessment and levy of taxes for general purposes in such city or town. In a city or town which has voted upon, and directed, the levy of a special tax not exceeding one-half of one per cent, the mayor or council or board of aldermen of such city or town shall annually levy such rate of tax for public school purposes, not exceeding one-half of one per cent, as shall be sufficient for the support of the public free schools for the term as required by law;

but in a city or town that has voted upon, and decided, at an election held for that purpose, that a specified rate of tax shall be assessed and levied in such city or town for the support of its public free schools, the mayor and council or board of aldermen of such city or town shall have no discretion in fixing the rate at which such tax shall be levied, but shall assess and levy the same at the rate fixed in the proposition as submitted and adopted by the qualified voters of such city or town at the election held for that purpose. [R. S. Art. 2879.]

A city must have authority from the Legislature to control its public schools before an election can be held to determine whether a tax can be levied for the support of the schools. *City of El Paso v. Conklin*, 91 Tex. 531, 44 S. W. 988.

In the levy of a tax by virtue of an election it must be done under an ordinance duly passed for that purpose. Where a mode is prescribed by which the city is authorized to do a certain thing that mode must be pursued. *Miller v. State*, 44 Cr. R. 99, 69 S. W. 525.

A city having assumed control of its public free schools, a tax levied for their support was valid. *Nalle v. City of Austin (Civ. App.)*, 42 S. W. 780.

535. School Trustees Determine Annual Rate.—In a city or town that may now or hereafter constitute independent school districts, and where a special tax for school purposes has been voted by the people, or provided by special charter, not exceeding one-half of one per cent, it shall be the duty of said board of trustees to determine what amount of said tax, within the limit voted by the people or fixed by special charter, will be necessary for the maintenance of the schools for each current year; and it shall become the duty of the city council, upon the requisition of the said board of trustees, to annually levy and collect said tax, as other taxes are levied and collected; and said tax, when collected, shall be placed at the disposal of the said school board, by paying over monthly to the treasurer of said board the amount collected for the support of the schools of such district, to be used for the maintenance and support of the public free schools of such independent district. [R. S. Art. 2880.]

Where a city's schools are under the control of a board of trustees, and the board determines in its discretion the amount of taxes which should be levied, within the authorized limit, for the ensuing year, the city council has no discretion but to levy the amount so fixed by the board. *City Council of Crockett v. Board of Trustees*, 44 C. A. 428, 98 S. W. 890, 891.

536. Manner of Assessment and Collection.—In an independent school district constituted of a city or town having a city assessor

and collector of taxes, such assessor and collector of taxes shall assess and collect the taxes for school purposes; provided, that in a city or town having an assessor and collector of taxes, the levy of taxes for school purposes shall be based upon the same assessment of property upon which the levy for other city purposes is based. It is further provided, that, in such a city or town, the assessor and collector of taxes shall receive no other compensation for collecting school taxes than the compensation paid him for assessing and collecting city taxes; and taxes for school purposes in such a city or town shall be assessed and collected as other city taxes are assessed and collected. [R. S. Art. 2881.]

School Law, par. 57 (Art. 2827) held to control Section 165 (Arts. 2826, 2881, 2891). *Gulf, C. & S. F. R. Co. v. Blum Independent School Dist.* (Civ. App.), 143 S. W. 353.

Under Art. 2827, which authorizes the levying of a special tax for school purposes, with the proviso "that in all assessments of property for taxing purposes * * * the property shall be assessed at the valuation fixed for said property for State and county purposes," as amended, and this article, held, that the amendment of the act did not remove the right to have the valuation of property limited to that fixed for county and State purposes where the assessment was made by the county assessor. *Underwood v. Childress Independent School Dist.* (Civ. App.), 149 S. W. 773.

537. Funds to Be Turned Over to School Treasurer.—The pro rata of the available school fund of the State appropriated and set apart to such city or town shall be, by the proper officer or department of the State, paid over directly to such treasurer of the board of trustees, who shall execute the proper receipts therefor; and all moneys and funds arising from the assessment and collection of any special tax in such city or town for public free school purposes shall be by the assessor and collector, or other proper officer of such city or town whose duty it is to collect the taxes, turned over directly to the treasurer of the board of trustees of such city or town, who shall execute and deliver his receipt to such collector; and the mayor and council or board of aldermen of such city or town shall have no power or control of such funds. [R. S. Art. 2882.]

County school superintendent has nothing to do with the State school fund apportioned to independent school districts because they receive it directly from the State. *Wester v. Oge*, 29 C. A. 615, 68 S. W. 1005, 1006.

538. Extension of City Limits for School Purposes.—Any city or town that has taken charge of the public free schools within its limits, or that shall hereafter take charge of the same, may, by ordinance, extend its corporation lines for school purposes only, on

a petition signed by a majority of the resident qualified voters of the territory, which is to be taken into said city or town for school purposes only, and recommended by a majority vote of the trustees of the public free schools of said city or town; provided, that the proposed change shall not deprive the scholastic children of the remaining part of the common school district or districts which may be affected by the proposed change, of the opportunity of attendance upon school. The added territory shall bear its pro rata part according to taxable values of any school debt or debts that may be owed or contracted by said city or town to which it shall have been added, and shall not bear any part of any other debt that may be owed or contracted by such city or town. The property of the added territory shall bear its pro rata part of all school taxes, but of no other taxes. The added territory shall not effect the city's debts or business relations in any manner whatever, except for school purposes as provided above. The officers whose duty it is to assess and collect school taxes within the city limits shall also assess and collect school taxes within the territory added for school purposes as herein provided. [R. S. Art. 2883.]

Under this article the city is authorized to collect the taxes therein by suit. *City of Eagle Lake v. Lakeside Sugar Refining Co.* (Civ. App.), 144 S. W. 709.

This article is not in conflict with Const. Art. 11, par. 10, which provides that the Legislature may constitute any city or town a separate and independent school district. *City of Eagle Lake v. Lakeside Sugar Refining Co.* (Civ. App.), 144 S. W. 709.

Under this article, which provides that whenever a majority of the inhabitants of any territory adjoining a city to the extent of one-half mile in width shall vote in favor of becoming a part of the city the city may annex such territory, any extension of a city's limits for school purposes, though it embraces land more than one-half mile in width, is authorized, if it complies with the condition preserving the right of attendance at school. *City of Eagle Lake v. Lakeside Sugar Refining Co.* (Civ. App.), 144 S. W. 709.

Irregularities in special act creating independent school district enacted within Legislature's power held subject to attack only upon suit by the State itself in quo warranto proceedings. *Snyder v. Baird Independent School Dist.* (Civ. App.), 109 S. W. 472.

The corporate existence of an independent school district, recognized under statute, cannot be inquired into in a collateral proceeding. *City of El Paso v. Ruckman*, 92 Tex. 86, 46 S. W. 25.

The position of superintendent of public schools of the city of Houston is an office, and the lawful incumbent thereof may sue to recover the office or its emoluments. *Kimbrough v. Barnett*, 93 Tex. 301, 55 S. W. 120.

It is not necessary that a claimant of the office of the superintendent of public schools of a city present his claim to the State superintendent of public instruction before bringing suit for possession of the office. *Id.*

Under the special charter of 1895 of the city of Sherman, the board of school trustees, when organized, became vested with exclusive control of the city schools, including the power to fix the superintendent's salary. *Board of Trustees v. City of Sherman*, 91 Tex. 188, 42 S. W. 546.

Charter of city construed, and held, that the board of school trustees had power to fix salary of superintendent of schools, and order payment thereof. *Board of School Trustees v. City of Sherman* (Civ. App.), 44 S. W. 615.

The office of member of board of education of a city held not property, within the State and Federal Constitutions. *Bonner v. Belsterling* (Civ. App.), 137 S. W. 1154.

A representation by the board of education of Dallas after the ordering of an election for the issuance of bonds for school purposes held not to control its action in disbursing the funds obtained by the issuance of the bonds approved at the election. *Ardrey v. Zang* (Civ. App.), 127 S. W. 1114.

CHAPTER XXI.

TAXES RELATING TO LEVEES, IMPROVEMENT DISTRICTS AND SEAWALLS.

(From Chapters 2 and 3, Title 83, R. S.)

	Sec.		Sec.
Power of Commissioners' Court to Establish Improvement Districts	539	Improvement District Bonds to Be Submitted to Attorney General	562
Improvement Districts May Control Levees, etc.	540	Improvement District Bonds to Be Registered by Comptroller; Not to Be Impeached.....	563
Requisites of Petition to Establish District and Issue Bonds..	541	Books of Bonds to Be Kept; Sinking Fund Provided.....	564
Objection to Creation of District, How Made by Any Person.....	542	Improvement District Bonds, How Sold; Proceeds, How Applied	565
Duty of Court on Hearing Petition	543	County Judge to Give Bond Before Selling Bonds	566
Commissioners' Court Shall Appoint an Engineer—Compensation	544	Expenses of Improvement District After Filing Petition, How Paid	567
Engineer Shall Give Bond Before Entering on Duties.....	545	Deposit to Accompany Petition Asking for Election.....	568
Duty of Engineer to Make Certain Estimates	546	Improvement District Tax to Be Levied	569
Report of Engineer Shall Be Accompanied by Maps	547	Duty of County Assessor to Assess Property; Removal for Failure	570
Hearing on Report of the Engineer	548	Tax Collector to Give Special Bond for Improvement Taxes..	571
Proceeds on Approval of Report of Engineer	549	Delinquent Taxes of Improvement Districts to Be Collected as Other Taxes	572
Duty of Court to Order Election—Form of Ballot.....	550	County Treasurer to Keep Account With Improvement Districts	573
Notice of Election; Election, How Conducted	551	Improvement District Taxes a Lien on Property Assessed.....	574
Oath to Be Taken by Voters.....	552	Duty of County Treasurer to Give Additional Bond for Improvement District Taxes.....	575
Returns of Election; Result Disclosed; Form of Certificate.....	553	Condemnation Proceedings Allowed for Improvement Districts; Acquisition of Right of Way	576
Improvement District Commissioners Appointed; Term of Office; Compensation	554	Improvement District Commissioners and Employes May Enter Upon Lands, When.....	577
Oath of Commissioners of Improvement Districts	555	Improvement Commissioners to Repair and Improve Levees.....	578
Bond of Improvement District Commissioners	556	Improvement Commissioners to Let Contracts to Lowest Bidder	579
Improvement District Commission to Organize	557		
Appointment of Engineer by Improvement District Commissioners—Compensation and Duties	558		
What Maps and Profiles of Levees Shall Show	559		
Improvement District Bonds to Be Issued; Limitations Upon Form and Terms of Improvement District Bonds.....	560		
	561		

	SEC.		SEC.
Bids for Construction Work on Improvement Districts, How Submitted	580	Improvement Commissioners May Dispose of Surplus Material.....	592
Improvement District Contracts Approved and Filed	581	Land to Be Sold by Commissioners; Form of Conveyance..	593
Contractor Shall Give Bond in Double Amount	582	Commissioners' Courts and Municipal Authorities Given Power to Establish Seawalls and Breakwaters	594
Construction Under Supervision of Engineer and Commissioners	583	May Impose Burdens on Streets and Highways for Seawalls.....	595
Shall Have Right of Way Across Railroads, etc.	584	Issue of Bonds for Seawalls Elections; Qualification of Voters....	596
Commissioners to Inspect Work—Payment of Warrants.....	585	Seawall Election, How Conducted; Board of Inquiry, Duties of	597
May Contract to Make Partial Payments	586	Seawall Election Returns; Canvass; Two-thirds vote Required	598
Annual Report of Improvement District Commissioners.....	587	Interest, Sinking Fund; Levy of Taxes for	599
Improvement District Commissioners May Employ Attorneys	588	Cession of State Lands for the Benefit of	600
Improvement District May Acquire Property; Sue and Be Sued	589	City and County Treasurers, Custodian of Funds, Exclusive Use of	601
Improvement Commissioners May Lease or Rent Land.....	590	Bonds to Be Issued in Cases of Counties, Cities and Towns.....	602
Improvement Commissioners May Let Use of Levees, etc.....	591		

539. Power of Commissioners' Court to Establish Improvement Districts.—The commissioners' court of the several counties of this State may hereafter create, establish and define one or more improvement districts in their respective counties in the manner hereinafter provided, and may, or may not, include within the boundaries and limits of such districts, villages, towns and municipal corporations, or any portion thereof; but no land at the same time shall be included within the boundaries of more than one improvement district created under the provisions of this chapter. [R. S. Art. 5530.]

540. Improvement Districts May Control Levees, Etc.—Such improvement districts, when so created, established and defined, may build and construct, or cause to be built and constructed and maintained, levees or other improvements on all rivers, creeks and streams within such districts, or which may border on the same, to prevent overflows thereof, and issue bonds in payment therefor, and the maintenance thereof, and levy and collect taxes for the payment of said bonds and interest thereon, as hereinafter provided, and may acquire, by grant, condemnation or otherwise, such levees or other improvements as may have been already constructed in such district. [R. S. Art. 5531.]

541. Requisites of Petition to Establish District and Issue Bonds.—Upon the presentation to the commissioners' court of any county

in the State of a petition signed by twenty-five of the resident property taxpayers in the proposed district, or in the event there are less than seventy-five resident property taxpayers in the proposed district, then by one-third of such resident property taxpayers of such district, praying for the establishment of an improvement district, the issuance of bonds and levy of a tax in payment thereof, and setting forth the necessity and feasibility and proposed boundaries thereof, and designating the name for such, the name to include the name of the county, the said commissioners' court shall, if in session when said petition is presented at said session of the court, set said petition down for a hearing at some regular or special session of the court called for that purpose, not less than thirty nor more than sixty days from the date of the presentation of said petition, and shall order the clerk of said court to give notice of the filing of the said petition, and of the date and place of hearing, by posting written or printed notices thereof in five public places in said county, one of which shall be at the court house door of the said county, and four of which shall be within the limits of the proposed improvement district. Such notices shall be posted for twenty days prior to the time set for such hearing. Said clerk may deputize some other person to perform such service, and the affidavit of such clerk or his deputy that such notices have been so posted shall be held conclusive thereof. Said clerk shall receive as compensation for such services one dollar for each of such notices and five cents per mile for each mile necessary to be traveled in posting same. Should said commissioners' court not be in session, at the time of the filing of said petition, it may be filed with the county judge of the county, who shall thereupon make and enter an order upon the minutes of said commissioners' court, setting said petition for hearing at some regular or special term of said commissioners' court, called for that purpose not less than thirty nor more than sixty days from the filing of said petition, and shall order the clerk of the said commissioners' court to give said notice as is herein provided for in this article, and which notice shall be posted for the time and as is provided for in this article. [R. S. Art. 5532.]

542. Objection to Creation of District, How Made by Any Person.—At the time set down for the hearing of said petition, any person who would be affected by the creation of said district may appear before the said court and contest or contend for the creation of said district, and may offer testimony to show that the said district is or is not necessary and would or would not be of public utility, and the creation of said district would or would not be

feasible or practicable. Said commissioners' court shall have exclusive or final jurisdiction to hear and determine all contests and objections to the creation of such districts, and all matters pertaining to the same; and said court shall have exclusive jurisdiction over all subsequent proceedings of said district, when organized, except as herein provided, and may adjourn hearings on any matter connected therewith from day to day; and all judgments, orders or decrees rendered by said court in relation thereto shall be final, except as hereinafter provided. [R. S. Art. 5533.]

543. Duty of Court on Hearing Petition.—If, upon the hearing of said petition, it shall appear to the court that the improvement of said river or rivers, creek or creeks or streams within such district, or which may border on the same, to prevent overflows, is feasible and practicable, and that it is needed and would be a public benefit, then the court shall so find, and shall render judgment reciting such findings, and create and establish such improvement districts, and cause such judgment to be entered of record. But, if the court should find that the improvement of such river or rivers, creek or creeks and streams is not feasible or practicable, or that it is not needed and would not be a public benefit, then the court shall enter such findings of record and dismiss such petition at the cost of the petitioners. [R. S. Art. 5534.]

544. Commissioners' Court Shall Appoint an Engineer—Compensation.—Should the court render judgment establishing such improvement district according to the boundaries set out in such petition, then the court shall appoint a competent engineer, who shall receive a sum of not more than ten dollars per day for his services for the time he is actually engaged in the work for which he is appointed; and said engineer may, with the consent of the commissioners' court, or the county judge, employ such assistants as may be necessary, at such compensation as may be fixed by the commissioners' court, or the county judge. [R. S. Art. 5535.]

545. Engineer Shall Give Bond Before Entering on Duties.—Before entering upon his official duties, the civil engineer shall enter into a bond in the sum of five hundred dollars, with two or more sureties, to be approved by and payable to the county judge for the use and benefit of the improvement district, conditioned for the faithful discharge of his duties under this chapter. [R. S. Art. 5536.]

546. Duty of Engineer to Make Certain Estimates.—Said civil engineer shall, as soon as practicable, go upon the lands and rivers, creeks and streams embraced in said district, or bordering thereon, and examine such river, creek or stream proposed to be improved

by levee or otherwise, and make an estimate of the probable cost of making and completing such levee or other improvement, and shall also designate the river or rivers, creek or creeks or streams necessary to be improved and the estimated cost of each, and also the estimated probable cost of maintaining same per year and make a detailed report of his work to the commissioners' court. [R. S. Art. 5537.]

547. Report of Engineer Shall Be Accompanied by Maps.—Such report shall be accompanied by maps showing the initial or beginning point of such improvement, and the nature and character and location of same, with the estimated cost thereof, together with the location and size of all levees, and the number of cubic yards of earth necessary to construct the same. [R. S. Art. 5538.]

548. Hearing on Report of the Engineer.—When the said report is filed with the clerk of the commissioners' court, it shall be the duty of the said court, if then in session, to make and enter of record an order setting said report down for a hearing at some subsequent regular or special term of not less than thirty nor more than forty days from said filing, and to require the clerk to give notice of such hearing by posting written or printed notices in the manner and places and for the length of time and for the same compensation as is provided for in Article 5532 of this chapter in regard to original notices of the filing of the petition. Should said court not be in session at the time of the filing of such report, then the county judge shall make the orders and cause written or printed notices to be given and posted as provided for in this chapter; and, if there should be no regular session of the said court within thirty days after such filing, he shall call a special session of the commissioners' court to act on such report, not less than thirty nor more than forty days from such filing. At the hearing of the said report, any taxpayer of said district, whether he resides in said district or not, may appear and object to any and all of such improvements and levees for the reason that they are located at the place or places, or that they are not sufficient in capacity to prevent an overflow. [R. S. Art. 5539.]

549. Proceedings on Approval of Report of Engineer.—If there should be no objection to said report, or if there should be objections thereto and the court shall find that the objections are not well taken, the report shall be approved, and the said report and the fact of such approval entered of record in the minutes of said commissioners' court, but the commissioners' court shall not be confined to the nature and character of the improvements or to the initial point, course and end of such improvements as shown

by the report of the engineer, but may change the location and add to or reduce the size, length and height of the levees and order the engineer to locate any additional levees and improvements as may be ordered by the commissioners' court, and the commissioners' court, if it is deemed necessary, may refer the entire report back to the engineer for a compliance with the order of said court; provided, that if the said commissioners' court shall not adopt, in whole or in part, the original report of the said engineer, as provided herein, they shall require, and it shall be the duty of the said engineer, to make and file with the said commissioners' court a further report in writing of the probable cost of said improvements, as said improvements may be modified or changed by said commissioners' court, as provided for in this chapter. Before the said commissioners' court shall make any change or alterations in such improvements, as reported by such engineer and as provided for in this article, such proposed action of the court shall be set down for hearing, and notice thereof shall be given by posting written or printed notices for the same length of time and in the same manner as provided for in Article 5539 of this chapter, in regard to the hearing of the said original report of said engineer. [R. S. Art. 5540.]

550. Duty of Court to Order Election, Form of Ballot.—After the approval of the engineer's report or reports, as provided for in the preceding articles of this chapter, and at the same session of the said commissioners' court, the said court shall order an election to be held within such improvement district at the earliest possible time, at which time there shall be submitted the following proposition, and none other: "For the improvement district and the issuance of bonds and levies of tax in payment therefor," "Against the improvement district and the issuance of bonds and levies of tax in payment therefor." [R. S. Art. 5541.]

551. Notice of Election; Election, How Conducted.—Notice of said election, stating the time and place or places of holding the same, shall be given by the clerk of the county commissioners' court by posting written or printed notices thereof in five public places in such proposed improvement district, and one at the court house door of the county in which such district is situated. Such notices shall contain the propositions to be voted upon as set forth in Article 5541 of this chapter, and shall also state the estimated cost of such improvement as reported by the engineer, and approved by the commissioners' court, and also the amount of bonds proposed to be issued, together with the rate of interest the same shall bear, and when the said bonds shall be due, and for a tax

to be levied and collected to pay said bonds and interest thereon. The manner of conducting said election shall be governed by the election law of the State of Texas, except as herein otherwise provided. None but resident property taxpayers, who are qualified voters of the said proposed improvement district, shall be entitled to vote at any election on any question submitted to the voters thereof by the county commissioners' court at such election. The commissioners' court shall name the polling place or places for such election within the proposed improvement district, and shall also select and appoint judges and other necessary officers of the election and shall provide one and one-half times as many ballots for said election as there are qualified resident taxpaying voters within such district as shown by the tax rolls of the county. Such ballots have printed thereon these words, and none others: "For the improvement district and issuance of bonds and levy of taxes in payment therefor," "Against the improvement district and issuance of bonds and levy of taxes in payment therefor." [R. S. Art. 5542.]

552. Oath to Be Taken by Voters.—Every person who offers to vote in any election held under the provisions of this chapter, shall first take the following oath before the presiding judge of the polling place where he offers to vote, and the presiding judge is hereby authorized to administer same: "I do solemnly swear (or affirm) that I am a qualified voter of _____ county, and that I am a resident property taxpayer of the proposed improvement district voted on in this election, and I have not voted before at this election." [R. S. Art. 5543.]

553. Returns of Election; Result Disclosed; Form of Certificate.—Immediately after the election, the presiding judge at each polling place shall make returns of the result in the same manner as provided for in elections for State and county officers and return the ballot boxes to the county clerk, who shall keep the same in a safe place, and deliver them, together with the returns from the several polling places, to the commissioners' court at its next regular session, or special session called for the purpose of canvassing the votes; and the county commissioners' court shall at such session canvass the vote; and, if it be found that a two-thirds of all of the resident property taxpayers voting thereon shall have been cast in favor of the improvements and the issuance of bonds and levy of taxes, then the court shall declare the result of the election to be in favor of the said improvement district, and bonds and taxes, and shall enter the same in the minutes of the said court as follows:

"The county commissioners' court of _____ county, Texas, _____ term, A. D. _____, in the matter of the petition of _____ and others, praying for the establishment of an improvement district, the issuance of bonds and the levy of a tax in payment thereof, in said petition fully described and designated by the name of _____ Improvement District _____." Be it known that at an election held for said purposes in said district on the _____ day of _____ A. D. _____ a two-thirds of all of the resident property taxpayers voting at said election, voted in favor of the creation of said improvement district and the issuance of bonds and the levy of taxes. Now, therefore, it is considered and ordered by the court that said improvement district be and the same is hereby established by the name of _____ Improvement District within the following named metes and bounds, to-wit: (Giving boundaries of the district.) [R. S. Art. 5544.]

554. Improvement District Commissioners Appointed; Term of Office; Compensation.—After the establishment of this district, as herein provided, the commissioners' court shall appoint three improvement commissioners, by a majority vote of said court, whose duty shall be as hereinafter provided, who shall each receive for his services a sum of not more than three dollars per day for the time actually engaged in the work of said district; provided, that the compensation, if any, shall have been definitely fixed in the order of the court making said appointment; and, before any amount shall be paid to said commissioners, or either of them, they shall make a detailed report to the commissioners' court of the time actually engaged in the work for said district, and of the work done; and such report shall be audited and approved by the commissioners' court. Said improvement commissioners shall hold office for a term of two years and until their successors shall be qualified, unless removed by a majority vote of the commissioners' court for malfeasance, or for non-feasance, in office; upon the expiration of the term of office of the said improvement commissioners, or in case of the resignation, death or refusal to act of any such improvement commissioners, the commissioners' court shall appoint their successors by a majority vote of said court. [R. S. Art. 5545.]

555. Oath of Commissioners of Improvement Districts.—Before entering upon their duties, all improvement commissioners shall take and subscribe before the county judge an oath to faithfully discharge the duties of their office without favor or partiality, and to render a true account of their doings to the court by which

they are appointed, whenever required to do so, which oath shall be filed by the clerk of the said commissioners' court and preserved as a part of the records of said improvement district. [R. S. Art. 5546.]

556. Bond of Improvement District Commissioners.—Before entering upon their duties, each of the said improvement commissioners shall make and enter into a good and sufficient bond in the sum of one thousand dollars payable to the county judge for the use and benefit of said improvement district, conditioned upon the faithful performance of their duty. [R. S. Art. 5547.]

557. Improvement District Commission to Organize.—The improvement commissioners shall organize by electing one of their number chairman and one secretary, and two of whom shall constitute a quorum, and the concurrence of two shall be sufficient in all matters pertaining to the business of said district. [R. S. Art. 5548.]

558. Appointment of Engineer by Improvement District Commissioners; Compensation and Duties.—After the establishment of said district, the improvement commissioners shall employ a competent civil engineer, upon a salary not to exceed the sum of ten dollars per day, for the time actually engaged in the work, whose term of office shall be at the will of said commissioners, which civil engineer shall proceed to make a map of such improvement district, showing the boundary lines thereof, with the original surveys therein, and also make maps and profiles of the several levees, or such other improvements located in such district; but a copy of the land map of the county, as it applies to such district, showing the name and number of surveys and showing the area or number of acres contained in such district, shall be a sufficient compliance with such order, in so far as making a map of the district is required; and any recognized map of any city or town which may be embraced within the boundaries of the district shall be sufficient as to such site of the town; provided, however, that where boundary lines of such improvements, or any of them, cornered at original surveys, the map shall show how many acres of such original survey are included within such improvement district. [R. S. Art. 5549.]

559. What Maps and Profiles of Levees Shall Show.—The map and profile of such levees and other improvements required by the provisions of this chapter to be made shall show the relations that each levee or other improvement bears to each tract of land through which it passes, and the shape in which it divides each tract; and, where the levee or other improvements cut off any

tract of land less than twenty acres, then the map shall show the number of acres so divided therefrom, and the number of acres in the whole tracts, and its relation to such levees or other improvements; and such profile map shall also show the number of cubic yards of earth necessary to be excavated to make each levee or other improvement located in such district, and give the estimated cost of each; and when said maps, profiles and estimates shall have been completed by the said engineer, he shall sign the same in his official capacity and file them with the clerk of the said commissioners' court. It is hereby further made the duty of such engineer to supervise and control the construction of any levee or other improvements made in said district as hereinafter provided. [R. S. Art. 5550.]

560. Improvement District Bonds to Be Issued; Limitations Upon.—After the establishment of any such improvement district, and after the making and filing of such maps and profiles and estimates, as herein provided for, and after said election authorizing the issuance of bonds and levy of tax, the commissioners' court shall make an order directing the issuance of improvement bonds for such districts sufficient to pay for such proposed improvements, and the maintenance thereof for a period of not exceeding two years; provided, however, that said bonds shall not exceed in the amount one-fourth of the assessed value of the real property of such district, as shown by the last annual assessment thereof made for the State and county taxation, and shall not exceed the estimate made by such engineer made before the election and voted on at the election in this chapter provided for; provided, however, that, if after an election has been held establishing the district, levying a tax and issuance of bonds it should become necessary for said improvement district to make further improvements, or alterations in the improvements already constituted, or to repair or maintain the improvements so created, and there shall be no sufficient funds in the construction and maintenance funds with which such improvements, alterations, repairs and maintenance may be made, then the improvement commissioners may apply to the commissioners' court for an election to be ordered by said court to issue additional bonds, stating the necessity therefor and the amount of bonds necessary, and the character of such improvements, repairs and maintenance, and the estimated cost therefor as made by such engineer, which shall accompany said application; and, upon the filing of such application, the commissioners' court shall set same down for hearing at some future regular or special session, and cause the county clerk

to give notice of such hearing, which notice shall state the character of such improvements, etc., together with the estimated cost therefor and the amount of such bonds and the rate of interest thereon, and the date when due. Said written or printed notices shall be posted in the same manner and places and for the same length of time as required by this chapter for the original petition for the creation of such district. If, upon said hearing, the court should find that the necessity for the issuance of such additional bonds, and that the taxable values of the real property of the said district as shown by the last annual assessment rolls for State and county taxes will admit of an additional bond issue, then the court shall order an election within said district for the purpose of voting on said proposed bond issue and the levy of taxes to pay said bonds and the interest thereon. The manner of holding such election and making returns, and the notices for said election, manner and time of giving notice thereof, and the qualifications of the persons entitled to vote therein, shall be the same as, and in all things governed by, the provisions of this chapter for the election held for the issuance of bonds and levy of tax in the first instance; and the commissioners' court shall meet and canvass the returns of such election as in the said first election; and, if it be found that two-thirds of the resident property taxpayers voting at said election vote in favor of the issuance of said additional bonds and the levy of said tax, then the said commissioners' court shall enter an order reciting the result of said election, and ordering the issuance of said additional bonds and issuance and sale and registration of such additional bonds and levy of said tax; and the issuance and sale and registration of such additional bonds shall in all things be governed by the provisions of this chapter in regard to the bonds first issued. [R. S. Art. 5551.]

561. Form and Terms of Improvement District Bonds.—All bonds issued under the provisions of this chapter shall be issued in the name of the improvement district, and shall be signed by the county judge and attested by the clerk of the county court with the seal of the county court affixed thereto; and such bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars each, and shall bear interest at a rate of interest not to exceed five per cent per annum, payable semi-annually at such times as may be specified therein. Such bonds and interest shall be made payable at the county treasurer's office of the county in which such improvement district is

located, or in the city of Austin, and no bond shall be made payable for more than forty years after its date. [R. S. Art. 5552.]

562. Improvement District Bonds to be Submitted to Attorney General.—Any improvement district in the State of Texas, desiring to issue bonds in accordance with this chapter, shall, before such bonds are offered for sale, forward to the Attorney General of this State a copy of the bond to be issued, a certified copy of the order of the commissioners' court levying the tax to pay interest and providing a sinking fund for the payment of such bonds, and a statement of the total bonded indebtedness of such improvement district as such, including the series of bonds proposed and the assessed value of the property for the purpose of taxation, as shown by the last official estimate by the county, together with such other information as the Attorney General may require. Whereupon, it shall be the duty of the Attorney General to carefully examine the said bonds in connection with the facts and the constitution and laws of the State of Texas governing and controlling the execution of said bonds; and if as a result of the examination, the Attorney General shall find that such bonds were issued in conformity with the Constitution and laws and that they are valid and binding obligations upon said improvement district in which they are issued, he shall officially so certify. [R. S. Art. 5553.]

The Attorney General cannot be compelled to certify to the validity of the bonds until they have been properly executed, and printed or lithographed ready for sale. To prepare a form in which the bonds are intended to be executed and present the same to the Attorney General for his inspection and opinion is not sufficient. He must have before him one of the bonds just as it will be offered for sale. *Hidalgo Co. Drainage Dist. I v. Davidson*, 102 Tex. 539, 120 S. W. 850.

563. Improvement District Bonds to Be Registered by Comptroller; not to Be Impeached.—When such bonds have been examined by the Attorney General, and his certificate attached thereto, they shall be registered by the State Comptroller in a book to be kept for that purpose; and the certificate of the Attorney General as to the validity of such bonds shall be preserved of record for use in event of litigation. Such bonds, after receiving the certificate of the Attorney General, and having been registered in the Comptroller's office, as herein provided, shall thereafter be held in every action, suit or proceeding in which their validity is, or may be brought into question, a prima facie, valid and complete obligation; and in every action brought to enforce the collection of such bonds, the certificate of the Attorney General, or a duly

certified copy thereof, shall be admitted and received in evidence on the validity of such bonds, together with the interest coupons thereto attached; provided, that the only defense that can be offered against the validity of such bonds shall be forgery or fraud. But this article shall not be construed to give validity to any such bonds as may be issued in excess of the limits fixed by the Constitution, or contrary to its provisions, but all such bonds shall, to the extent of such excess levy, be void. [R. S. Art. 5554.]

564. Books of Bonds to Be Kept; Sinking Fund Provided.—Before issuing any bonds under the provisions of this chapter, the county commissioners' court shall first provide a well-bound book in which a record shall be kept by the clerk of said court of all bonds issued, with their number, amount, rate of interest and date of issuance, when due, where payable, and amount received for the same, and the tax estimate to pay the interest on said bonds; and said commissioners' court shall provide for a sinking fund for their payment, which shall be set forth in said book; and said book shall at all times be open to the inspection of all parties interested in said district, either as taxpayers or bondholders; and, upon the payment of any bond, an entry thereof shall be made in said book. The county clerk shall receive for his services in recording all bonds and other instruments of the improvement district, the same fees as provided for other like records. [R. S. Art. 5555.]

565. Improvement District Bonds, How Sold; Proceeds, How Applied.—When such bonds have been registered as provided for in the preceding articles of this chapter, the county commissioners' court may appoint the county judge, or some other suitable persons, to sell said bonds on the best terms and for the best price possible; provided, that none of said bonds shall be sold for less than the face par value thereof and accrued interest thereon; and, as fast as said bonds are sold, all money received therefrom shall be paid into the county treasury and shall by him be placed to the credit of such improvement district. [R. S. Art. 5556.]

566. County Judge to Give Bond Before Selling Bonds.—Before the county judge, or such other person as may be appointed by the commissioners' court, shall be authorized to sell any of said improvement bonds, the county judge, or other person so appointed, shall execute a good and sufficient bond payable to the commissioners of such improvement district, to be approved by the commissioners' court of said county, for an amount not less than the amount of the bonds issued, conditioned upon the faithful discharge of his duty, which bonds shall be subject to the approval of said improvement commissioners; and the person selling said bonds

shall be allowed one-half of one per cent of the amount received for sale of the bonds sold by him in full payment for his services in their behalf. [R. S. Art. 5557.]

567. Expenses of Improvement District After Filing Petition, How Paid.—All expenses of any kind, after the filing of the original petition, necessarily incurred in connection with the creation, establishment and maintenance of any improvement district under the provisions of this chapter, shall be paid out of the construction and maintenance funds of such improvement district; which funds shall consist of all moneys received from the sale of bonds and all other moneys or property received by such district whatsoever the source, except tax collections applied to the sinking funds and the payment of interest on the improvement bonds; provided, that should the proposition for the creation of such improvement district and the issuance of bonds be defeated at the election called to vote upon the same, then all expense up to and including said election shall be paid for as provided in this chapter. [R. S. Art. 5558.]

568. Deposit to Accompany Petition, Asking for Election.—When the petition praying for the establishment of an improvement district is filed with the county commissioners' court, it shall be accompanied by two hundred dollars in cash which shall be deposited with the clerk of the said county commissioners' court, and by him held until after the result of the election for the creation of said improvement district has been declared and entered of record by the commissioners' court, as hereinbefore provided; and, should the result of said election be in favor of the establishment of such district, then the said two hundred dollars shall be by the said clerk returned to the signers of the said original petition, or their treasurer or attorney; but, should the result of said election be against the establishment of said improvement district, then the said clerk shall pay out of the said sum of two hundred dollars, upon vouchers signed by the county judge, all costs and expenses pertaining to the said proposed improvement district up to and including the said election, and shall return the balance, if any, to the signers of said original petition, or their agent or attorney. [R. S. Art. 5559.]

569. Improvement District Tax to Be Levied.—Whenever any such improvement bonds shall have been voted the commissioners' court shall levy, and cause to be assessed and collected, improvement taxes upon all property within said improvement district, whether real, personal or mixed, or otherwise, and sufficient in amount to pay the interest on such bonds as it shall fall due, together with an additional amount to be annually placed in the sinking funds sufficient to discharge and redeem said bonds at their ma-

turity. If advisable, the sinking fund shall, from time to time, be invested in such county, municipal, district or other bonds as shall be approved by the Attorney General of the State. If any of said bonds shall be offered for payment and redemption before the date of their maturity, it shall be the duty of the county judge of the county, and the county treasurer, to pay and redeem same upon request of the improvement commissioners, if there be at the time a sufficient amount of money in said sinking fund for that purpose. [R. S. Art. 5560.]

570. Duty of County Assessor to Assess Property; Removal for Failure.—The county commissioners' court shall provide all necessary additional books for the use of the assessor and collector of taxes and the county clerk for such improvement district, and charge the cost of same to the said district. It shall be the duty of the county tax assessor, when ordered to do so by the commissioners' court, to assess all property within such improvement district and list the same for taxation in the books or rolls furnished by the said commissioners' court for that purpose and return said books or rolls at the same time when he returns the other books or rolls of the State and county taxes for correction and approval; if the said commissioners' court shall find said books or rolls correct, they shall approve the same and order the county clerk to issue a warrant against the county treasurer in favor of said tax assessor, to be paid from the funds of said improvement district. The tax assessor shall receive for his services such compensation as the said county commissioners' court shall deem proper to compensate him for the amount of work done; provided, that the said county assessor shall in no event be allowed less than what he is now allowed by law for like services. Should the tax assessor fail or refuse to comply with the orders of the commissioners' court requiring him to assess and list for taxation all property in such improvement district as herein provided, he shall be suspended from the further discharge of his duty by the commissioners' court of his county, and he shall be removed from office in the mode prescribed by law for the removal of county officers. [R. S. Art. 5561.]

571. Tax Collector to Give Special Bond for Improvement Taxes.—The tax collector of the county shall be charged by the county commissioners' court with the assessment rolls of the improvement district, and he shall be allowed such compensation for the collection of such taxes as he is now allowed for the collection of other taxes. The county commissioners' court shall require the tax collector of the county to give an additional bond of security, in such sum as they may deem proper and safe, to secure the col-

lection of said taxes; and, should any collector of taxes fail or refuse to give such additional bond or surety as herein provided when required by the commissioners' court, within the time prescribed by law for such purposes, he shall be suspended from office by the commissioners' court of his county, and immediately thereafter be removed from office in the mode prescribed by law. [R. S. Art. 5562.]

572. Delinquent Taxes of Improvement Districts to Be Collected as Other Taxes.—It shall be the duty of the tax collector to make a certified list of all delinquent property upon which the improvement taxes have not been paid, and return the same to the county commissioners' court, and said court shall proceed to have said taxes collected by the sale, by the collector, or by suit, in the same manner as now provided for the collection of delinquent State and county taxes; and at any sale of such property for such delinquent improvement taxes, the improvement commissioners may become the purchasers of the same for the benefit of the improvement district. [R. S. Art. 5563.]

573. County Treasurer to Keep Account With Improvement District.—It shall be the duty of the county treasurer to open an account with the improvement district and to keep an accurate account of all moneys received by him belonging to such district, and all moneys paid out by him. He shall pay out no money, except upon a voucher signed by two of the improvement commissioners and countersigned by the county judge, and he shall carefully preserve all orders for the payment of money; and, as often as required by the said improvement commissioners or the commissioners' court, he shall render a correct account to them on all matters pertaining to the financial condition of such district. [R. S. Art. 5564.]

574. Improvement District Taxes a Lien on Property Assessed.—All taxes levied, or authorized to be levied by this chapter shall be payable and shall mature and become delinquent as is provided by the laws of this State for State and county taxes, and, upon the failure to pay such taxes when due, the same penalties shall accrue and be collected as provided by the laws of the State of Texas for non-payment of State and county taxes. All taxes shall be a lien upon the property for which said property is assessed. In the assessment and collection of the taxes levied, or authorized to be levied, by this chapter, the assessor and collector of taxes shall, respectively, have the same powers and shall be governed by the same rules and regulations as provided by the laws of the State of Texas for the assessment and collection of State and county taxes, unless herein otherwise provided. [R. S. Art. 5565.]

575. Duty of County Treasurer to Give Additional Bond for Improvement District Taxes.—The county treasurer shall execute a good and sufficient bond, payable to the improvement commissioners and their successors in office of such district, and in the county where said district is located, in a sum equal to one and one-fourth the amount of the bonds issued, conditioned for the faithful performance of his duty as treasurer of such district, which bond shall be approved by said improvement commissioners; and the treasurer shall be allowed as compensation for his services as such treasurer, one-half of one per cent. Such treasurer may make said bond with any guaranty or surety company as may be approved by such improvement commissioners; and the premiums due such guaranty or surety company making said bond shall be paid out of the maintenance fund of the improvement district, and shall not be a charge against the county treasurer. [R. S. Art. 5566.]

576. Condemnation Proceedings Allowed for Improvement Districts. Acquisition of Right of Way.—The right of eminent domain is hereby expressly conferred upon all improvement districts established under the provisions of this chapter for the purpose of acquiring the fee-simple title, easement of right of way to and over and through any and all lands, waters, or lands under waters, private or public (except land and property used for cemetery purposes) within or bordering on such districts, necessary for making, constructing and maintaining all levees and all other improvements for the improvement of a river or rivers, creek or creeks or streams within or bordering on such districts, to prevent overflows thereof. All condemnation proceedings or suits in the exercise of eminent domain under this chapter shall be instituted under the direction of the improvement commissioners and in the name of the improvement district, and all suits or other proceedings for such purposes and for the assessing of damages shall be in conformity to the statutes of the State of Texas for condemning and acquiring land or the right of way thereon, by eminent domain, by railroad corporations; provided, that no appeal from the judgment or order of condemnation of the commissioners assessing damages to any one whose land is sought to be condemned shall have the effect of preventing the said improvement district from going upon and using the land so sought to be condemned during the pendency of said appeal; provided, however, that the said improvement district shall deposit with the county clerk of the county, in which such proceedings are pending, a sum equal to double the amount of money adjudged by them to be paid for said land, or the right of way thereon, and all costs thereon accrued.

The improvement commissioners of any district are hereby empowered to acquire the necessary right of way for all levees and other necessary improvements contemplated by this chapter, by gift, grant, purchase or condemnation proceedings, and may by the same method acquire any levees or other improvements already constructed within the territory in any such improvement district, and, if acquired by grant or purchase, such purchase shall be subject to the approval of the county commissioners' court. [R. S. Art. 5567.]

577. Improvement District Commissioners and Employes May Enter Upon Lands, When.—The improvement commissioners of any district and the civil engineer, from time of their appointment, are hereby authorized to go upon any lands or water courses lying within said districts, or bordering thereon, for the purpose of examining the same, and locating all levees and other improvements, making plans, surveys, maps and profiles, together with all necessary teams, help and instruments, without subjecting themselves to an act of trespass. [R. S. Art. 5568.]

578. Improvement Commissioners to Repair and Improve Levees—It shall be the duty of such improvement commissioners to keep the levees and other improvements made under the provisions of this chapter in repair, and they shall be given authority to supervise and control the construction and maintenance of same; and no county or improvement district, nor the taxpayers therein, shall be held for damages occasioned by the construction, maintenance or repair of levees or other improvements under the provisions of this chapter. [R. S. Art. 5569.]

579. Improvement Commissioners to Let Contracts to Lowest Bidder.—Contracts for making and constructing levees and other improvements, and all necessary work in connection with any improvement district, shall be let by the improvement commissioners to the lowest bidder, after giving notice by advertising the same in one or more newspapers of general circulation in the State of Texas once a week for four consecutive weeks, and by posting notices for at least thirty days in five public places in the county, one of which shall be at the court house door, and at least two of which shall be within said improvement district; and the contract for such levee and other improvement may be let in separate sections or parcels, or all together; provided, that all the improvements included in the report of improvement engineer and approved by the court as provided for in this chapter, shall be constructed. [R. S. Art. 5570.]

580. Bids for Construction Work on Improvement Districts, How Submitted.—Any person, or corporation, or firm desiring to bid on the construction of any work, advertised as provided for in this

chapter, shall, upon application to the improvement commissioners, be furnished a copy of the engineer's report, showing location, profile and estimate of such as is provided for in this chapter; provided, such person shall pay the county clerk for making same, and all bids or offers to do any work shall be in writing and sealed and delivered to the chairman of the improvement commissioners, together with a certified check for at least five per cent of the total amount bid, which shall be forfeited to the district in case the bidder refuses to enter into the proper contract, if his bid is accepted, and any and all bids may be rejected by the said commissioners. [R. S. Art. 5571.]

581. Improvement District Contracts Approved and Filed.—All contracts made by the improvement commissioners shall be reduced to writing and signed by the contractor and the commissioners, and approved by the county judge and a copy of same shall be filed with the county clerk for reference. [R. S. Art. 5572.]

582. Contractor Shall Give Bond in Double Amount.—The party, firm, or corporation, to whom any such contract is let, shall give bond payable to the improvement commissioners for said district, and in the county where said district is located, in double the amount of the contract price, conditioned that he, they or it, will faithfully perform the obligations, agreements and covenants of their contracts, and in default thereof will pay to said district all damages sustained by reason thereof. Said bond shall be approved by such commissioners and the county judge. [R. S. Art. 5573.]

583. Construction Under Supervision of Engineer and Commissioners.—The improvement engineer shall furnish the contractor with a sectionized profile of the work contracted for, showing the height, width and slope, brim and location of all levees and the number of cubic yards of earth to be removed and other work to be done by the contractor, together with drawn plans and specifications for such work; and such work shall be done by the contractor under the management and control and supervision of said improvement engineer and improvement commissioners, who shall indicate to the said contractor the beginning point and termination of all levees and other improvements called for by said contract; and, when such work is completed according to the contract, the engineer shall make a detailed report of the same to the improvement commissioners, showing whether the contract has been fully complied with according to its terms, and, if not, in what particular it has not been complied with. [R. S. Art. 5574.]

584. Shall Have Right of Way Across Railroads, etc.—The said improvement commissioners are hereby authorized and empowered

to make all necessary levees, bridges and culverts to, across, and under any railroad tracks and right of way of any such railroads to enable them to construct and maintain any levees or other improvements necessary to be constructed as a part of the levee system of such district, such levees, bridges, or culverts to be paid for by such improvement district; provided, however, that notice shall first be given by such improvement commissioners to the railroad authorities to build or construct levees, bridges or culverts; and the railway company shall be allowed thirty days in which to build or construct the same at its own expense, if it should so desire according to its own plans; provided, that such levees, bridges, or culverts shall be constructed so as not to interfere with the purpose of said levee or other improvement, nor with the operation of said railway. [R. S. Art. 5575.]

585. Commissioners to Inspect Work—Payment of Warrants.—The said improvement commissioners shall have the right, and it is hereby made their duty, at all times during the progress of the work being done under contract, to inspect the same; and upon the completion of any contract to their satisfaction, and when they have accepted the improvements as completed according to contract, they shall draw a warrant on the county treasurer for the amount of the contract price, or so much thereof as remains unpaid at that time, in favor of the contractor, or his assigns, which warrant shall, when approved by the county judge, be paid out of the improvement funds of said district. [R. S. Art. 5576.]

586. May Contract to Make Partial Payments.—If the said improvement commissioners shall deem it advisable in order to obtain more favorable contracts, they may advertise and contract for work to be paid in partial payments as the work progresses; but such partial payments shall not exceed in the aggregate seventy-five per cent of the amount to be paid under the contract, the amount of work completed to be shown by certified report of the engineer, and no payment to be made for work not completed. [R. S. Art. 5577.]

587. Annual Report of Improvement District Commissioners.—The improvement commissioners shall make an annual report of their acts and doings as such commissioners, and file the same with the clerk of the county court on or before the first day of January of each year, which report shall show in detail the kind, character and amount of work done in the district, the cost of the same, and other data necessary to show the conditions of improvements under the provisions of this chapter. [R. S. Art. 5578.]

588. Improvement Commissioners May Employ Attorneys.—The improvement commissioners are hereby empowered and authorized to employ counsel to represent such districts in the preparation of any contracts, or the conducting of any proceedings in or out of court, and to be the legal adviser of such improvement commissioners upon such terms and for such fees as may be agreed upon by them and approved by the county judge; and such commissioners may draw a warrant in payment of such legal services, to be paid out of the fund of said district upon approval by the county judge. [R. S. Art. 5579.]

589. Improvement Districts May Acquire Property; Sue and Be Sued.—The improvement districts established under this chapter may acquire property, and, through the improvement commissioners, sue and be sued in all the courts of this State in the name of such improvement district; and all courts of this State shall take judicial notice of such said districts. [R. S. Art. 5580.]

590. Improvement Commissioners May Lease or Rent Land.—The improvement commissioners, for the purpose of protecting any levees or other improvement constructed under the authority of this chapter, shall be authorized to keep the space between any levees or other improvement, and the stream or streams the overflow of which is intended to be prevented, free and clear from all obstructions; and, if any district should by gift, purchase, or condemnation become the owner of any such land, or any other land not needed and used for the purpose of drainage, the said improvement commissioners shall have authority to lease any such land for any purpose which shall not interfere with the work or use of such district, on such terms and for such rental as said improvement commissioners may see fit; and all moneys received therefrom shall be paid to the county treasurer for the use of said district. [R. S. Art. 5581.]

591. Improvement Commissioners May Let Use of Levees, etc.—The improvement commissioners shall have the authority, with the consent of the county judge, to let the use of any levee for a public highway, or street, or railway, or street railway, or interurban railway right of way, or for telegraph, telephone, or electric poles upon such terms as such improvement commissioners and the county judge shall deem proper; but provisions shall be made in any such contract for the payment by the levy of an equitable portion of the cost and expense of thereafter maintaining such levee in good condition for the purposes for which such levee was constructed; and any money received for such rental use shall be paid to the county treasurer for the use of such district. [R. S. Art. 5582.]

592. Improvement Commissioners May Dispose of Surplus Material.—The improvement commissioners shall have authority to dispose of, by sale, any and all earth or any material acquired by the district and not needed for the construction or maintenance of the improvements being constructed under the provisions of this chapter pertaining to this district; and any money received from same shall be paid to the county treasurer for the use and benefit of the district. [R. S. Art. 5583.]

593. Land to Be Sold by Commissioners; Form of Conveyance.—The improvement commissioners, with the consent of the commissioners' court, shall have authority to sell and convey any land, the fee of which has been acquired by such district by purchase, gift, or condemnation, and not needed at the time, or likely to be thereafter needed, for the use of the district, upon such terms as said improvement commissioners and the county judge may deem best for the district; and the money received from any such sale shall be paid to the county treasurer for the use of the district. The deed of conveyance of such lands shall be executed by the chairman of such improvement district commissioners, in the name of the improvement district. [R. S. Art. 5584.]

594. Commissioners' Courts and Municipal Authorities Given Power to Establish Seawalls and Breakwaters.—The county commissioners' court of all counties, and the municipal authorities of all cities, bordering on the coast of the Gulf of Mexico, shall have the power and are authorized to establish, locate, erect, construct, maintain and keep in repair, seawalls and breakwaters, and to incur indebtedness and issue bonds therefor, and to levy taxes not to exceed in any one year fifty cents on the one hundred dollars of taxable values of said county or city for the payment thereof as hereinafter provided. [R. S. Art. 5585, Act 1901, 1 S. S., p. 23, Sec. 1.]

This act gives counties authority to construct seawalls or breakwaters in the cities in the county, as well as outside of such cities. *Johnston v. Galveston County* (Civ. App.), 85 S. W. 511.

If funds can be obtained in any other, the county can undertake the work without issuing bonds or levying a tax therefor. *Johnston v. Galveston County* (Civ. App.), 85 S. W. 511.

595. May Impose Burdens on Streets and Highways for Seawalls.—Said county commissioners' court, and municipal authorities, shall have the power to impose such additional uses and burdens upon all streets, alleys, public highways and other public grounds as they may deem necessary for the location, erection, construction and maintenance of seawalls and breakwaters, and to license, regulate

or grant such additional uses of said seawalls or breakwaters as will not impair their efficiency. [R. S. Art. 5586.]

596. Issue of bonds for Seawalls, Elections; Qualification of Voters, etc.—Before incurring any indebtedness, and before issuing the bonds of the county, or city, for the purpose authorized by this chapter, said county commissioners' court, or municipal authorities, shall prescribe the amount of the bonds to be issued, the rate of interest thereon, and provide for an election, at which all taxpayers who are qualified voters entitled to vote in said county, or city, shall be allowed to vote for or against the proposed taxation for the payment of said bonds and interest thereon. [R. S. Art. 5588.]

597. Seawall Election, How Conducted; Board of Inquiry, Duties of.—For the purpose of ascertaining whether two-thirds of the taxpayers of said county, or city, have voted in favor of the proposed taxation, the county judge, the county assessor and the county collector, or three members of their own body selected by the municipal authorities, as the case may be, are hereby constituted and appointed a board of inquiry. Whenever an election is ordered hereunder, said board shall make out from the latest completed assessment rolls of said county, or city, a list of all taxpayers of said county, or city, who are qualified voters and taxpayers entitled to vote hereunder; and from the date of the notice of said election until five days before the day thereof, said board shall sit daily for the purpose of making additions to and corrections of said list, and all taxpayers being qualified voters shall, during said period, have the right to apply to said board and to have their names entered on said list. During the period of five days before said election, said board shall make out under certificate and file with the county or city clerk, as the case may be, a complete alphabetical list of all taxpayers who are qualified voters at said election, and shall furnish printed copies of said list to the officers at each poll at said election. Said printed list furnished by said board, and the returns and poll lists of said election, shall be returned to the county, or city clerk, as the case may be. The ballots at said election shall be printed or written on white paper, without any outward mark or device to distinguish the same, and shall contain the words, in substance, "In favor of the proposed tax," or, "Against the proposed tax." Said election shall, except as herein otherwise provided, be ordered and conducted in the same manner in all respects as are general State and county, or municipal, elections, so far as the same are applicable not including, however, registration, and provisions incidental thereto, and the returns thereof shall be made in like manner, as far as

may be; provided, nevertheless, that said election may be held on thirty days' notice thereof at any time fixed by the county commissioners' court, or municipal authorities. And the proposition to levy a tax hereunder may be renewed until the power to tax hereunder shall have been exhausted. [R. S. Art. 5589.]

598. Seawall Election Returns; Canvass; Two-thirds Vote Required.—The county commissioners court, or municipal authorities, shall, as soon as practicable after said election, meet and canvass the returns thereof, and with the aid of the returns and lists herein provided for, together with such other evidence as may be required, ascertain and record in the minutes of the commissioners' court, or of the municipal authorities, the total number of taxpayers of said county or city who are qualified voters on the day of said election, the number of said taxpayers voting in favor of the proposed taxation, and the number of said taxpayers voting against the same. In the event that two-thirds of the taxpayers of said county or city, who are qualified voters therein, shall have voted in favor of the proposed tax, the said county or city shall thereupon have power to issue its bonds for the construction and maintenance of seawalls and breakwaters. [R. S. Art. 5590.]

599. Interest, Sinking Fund; Levy of Taxes for.—Whenever bonds are issued under the preceding article, the county commissioners' court, or municipal authorities, shall annually levy, assess and collect, in the mode prescribed by law for other county or municipal taxes, a tax on the real estate and personal or mixed property in said county, or city, sufficient to pay the interest and provide a sinking fund of not less than two per cent of the principal of all of said bonds; and all taxes collected by virtue hereof shall be held in trust by said county, or city, as a special and inviolable fund for the payment of interest and principal of said bonds; provided, however, that any surplus above the amount required to meet the annual interest may be invested for the benefit of the sinking fund in the bonds issued hereunder or in bonds of the State of Texas. or of the United States. [R. S. Art. 5591.]

600. Cession of State Lands for the Benefit of.—The better to enable said counties and cities to secure the protection herein provided for, and to aid in the construction of said works, the right to the use and control for the purposes prescribed by this chapter, of so much of the land or sea bottom below high tide as may be deemed necessary by said county commissioners' court, or municipal authorities, is hereby ceded by the State of Texas to counties and cities availing themselves of the provisions of this chapter. [R. S. Art. 5592.]

601. City and County Treasurers Custodian of Funds, Exclusive Use of.—All funds, revenues and moneys derived from the sale of the bonds herein authorized, and from the sale or rent of reclaimed or other lands acquired under this chapter and from additional uses of said works as herein authorized, shall be deposited with the county or city treasurer, as the case may be, and shall be held in trust exclusively for the construction and maintenance of seawalls and breakwaters, including the purchase of the right of way therefor; and all moneys derived from the assessment and levy of taxes as aforesaid are declared to be a trust fund for the payment of interest and principal of bonds to be issued under this chapter; and the use or diversion of such moneys for any other purpose whatsoever is hereby prohibited, and a violation of this article shall constitute a misapplication of public money, and the person or persons so offending shall be punished as provided in Article 96 of the Penal Code of the State of Texas. [R. S. Art. 5593.]

602. Bonds to Be Issued in Cases of Counties, Cities and Towns.—All bonds issued hereunder shall be issued under and subject to the provisions of Article 616-620, 622-625, inclusive, of the Revised Statutes of this State now in force, in so far as said articles do not conflict with the provisions of this chapter, and this chapter shall apply to all cities bordering on the coast of the Gulf of Mexico, whether said cities are incorporated by general or special laws; and all laws and parts of laws in conflict herewith are hereby repealed. [R. S. Art. 5594.]

CHAPTER XXII.

TAXES RELATING TO NAVIGATION DISTRICTS AND THEIR ESTABLISHMENT.

(From Title 96. R. S.)

	Sec		Sec.
How Navigation Districts May Be Established	603	Record of Bonds to Be Kept; Duties and Fees of Clerk.....	626
Application to Commissioners' Court to Contain What; Notice Given	604	Navigation Bonds Sold, How; Limitations on Sale.....	627
Navigation Boards in Cities and Towns with Special Charters..	605	Chairman of Navigation Board to Give Bond	628
Notice of Hearing Before Navigation Board	606	Cost of Proceedings to Establish District; How Provided.....	629
Proceedings to Be Recorded by County Clerk	607	Duty of Commissioners' Court to Levy Tax, When	630
Duties Imposed Without Compensation	608	Available Sinking Fund, How Invested	631
Objections and Contest on Hearing of Petition.....	609	Navigation Tax Proceedings; Compensation of Assessor.....	632
Finding of Board at Hearing of Petition	610	Compensation of Tax Collector; Additional Bond Required.....	633
Navigation District Election; Form of Ballot.....	611	Duty of Tax Collector to Make List of Delinquents; Tax Sales	634
Notice of Navigation District Election	612	Duty of County Treasurer to Open Account With Navigation District	635
Navigation District Election to Conform to General Election Law	613	County Treasurer to Execute Additional Bond	636
Qualification of Electors; Form of Oath Before Voting.....	614	Right of Eminent Domain Conferred on Districts.....	637
Commissioners' Court to Canvass Returns; Declare Results.....	615	Board May Acquire Property for Navigation Purposes	638
Navigation Commissioners, How Appointed; Qualifications; Compensation, Term of Office..	616	Navigation Commissioners May Enter Lands to Make Surveys..	639
Oath of Commissioners of Navigation Districts	617	Work, How Done; Contracts, How Let When United States Government Fails to Act.....	640
Bond of Navigation Commissioners	618	Bids for Work, How Awarded....	641
Organization of Navigation District Board Quorum.....	619	All Contracts to Be in Writing and Filed	642
Navigation Districts Engineers Appointed; Duties; Compensation; U. S. Government aid; Proceedings in Case of.....	620	Navigation District Contractor's Bond	643
Commissioners' Court to Issue Bonds, When and How.....	621	Work Supervised by Navigation Engineer; His Report.....	644
Navigation Bonds, When Issued; Assessments, Limitation of.....	622	Navigation District Commissioners to Inspect Work; Payment, How Made	645
Navigation Bonds, Form of, Denominations, Term	623	Navigation District Commissioner's Report of Work to Contain What	646
Attorney General to Certify to Validity of Navigation Bonds....	624	Navigation District Commissioners May Employ Assistant Engineers and Legal Counsel.....	647
Certificate of Attorney General; Effect of	625	Unlawful for Officers to Be Interested in Contracts.....	648
		Navigation District Commission May Sue and Be Sued.....	649

603. How Navigation Districts May Be Established; May Include What.—One or more districts may be established in the several counties of this State, to be known as navigation districts, in the manner hereinafter provided; and such districts may or may not include within their boundaries and limits villages, towns and municipal corporations, or any parts thereof. Such navigation districts, when so established, may make improvements of rivers, bays, creeks, streams and canals running or flowing through such districts, or any part thereof, and may construct and maintain canals and waterways to permit of navigation or in aid thereof, may issue bonds in payment thereof as hereinafter provided. [R. S. Art. 5955.]

604. Application to Commissioners' Court to Contain What; Notice Given.—Upon the presentation to the county commissioners' court of any county of this State of a petition, accompanied by the deposit provided for in Article 5981 of this chapter, signed by twenty-five of the resident property taxpayers, or in the event there are less than seventy-five resident property taxpayers in the proposed district, then by one-third of such resident property taxpayers of any proposed navigation district, praying for the establishment of a navigation district, and setting forth the boundaries of the proposed district, accompanied by a map thereof, the general nature of the improvement or improvements proposed, and an estimate of the probable cost thereof, and praying for the issuance of bonds and levy of tax in payment thereof, and designating a name for such navigation district, which name shall include the name of the county, said petitioners shall make affidavit to accompany said petition of their said qualification; and the said commissioners' court shall, at the same session when said petition is presented, set same down for hearing at some regular term of said court, or at some special session of said court called for the purpose, not less than thirty nor more than sixty days from the presentation of said petition, and shall order the clerk of said court to give notice of the date and place of said hearing by posting a copy of said petition, and the order of the court thereon, in five public places in said county, one of which shall be at the court house door of said county, and four of which shall be within the limits of said proposed navigation district, which said notices shall be posted not less than twenty days prior to the time set for the hearing. The said clerk shall receive as compensation for such services one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting such notices. [R. S. Art. 5956.]

605. Navigation Boards in Cities and Towns with Special Charters.—In the event the boundaries of the proposed district shall include a city or cities, or a part or parts thereof, acting under special charter granted by the Legislature, the hearing of said petition, hereinafter provided for, shall be had before the county judge and members of the commissioners' court and the mayor and aldermen or commissioners, as the case may be, of said city or cities; and said persons shall constitute a board to be known and designated as the navigation board, to pass upon the petition aforesaid. Each individual member of the said board shall be entitled to a vote. A majority in number of the individuals composing said board shall constitute a quorum, and the action of a majority of the quorum shall control. [R. S. Art. 5957.]

606. Notice of Hearing Before Navigation Board.—In the event the hearing of said petition shall be had before the navigation board, the commissioners' court of said county shall set the petition down for hearing not less than thirty nor more than sixty days from the date of the presentation of said petition without reference to any term of the commissioners' court, but said hearing shall be held at the regular place of meeting of the commissioners' court, and notice shall be given of the hearing in the manner and for the time as hereinbefore provided. [R. S. Art. 5958.]

607. Proceedings to Be Recorded by County Clerk.—The county clerk shall enter and record the proceedings of the navigation board in a record book kept for this purpose, which record shall be a public archive. [R. S. Art. 5959.]

608. Duties Imposed Without Compensation.—The duties and powers herein conferred upon the county judge and members of the commissioners' court, and upon the mayor and aldermen or commissioners of cities, and upon the county clerk and other officers, are made a part of the legal duty of said officials, which they shall render and perform without additional compensation, unless otherwise provided herein. [R. S. Art. 5960.]

609. Objections and Contest on Hearing of Petition.—Upon the day set by said county commissioners for the hearing of said petition, any person who has taxable property within the proposed district, or who may be affected thereby, may appear before the said court, or navigation board, as the case may be, and contest the creation of said district, or contend for the creation of said district, and may offer testimony in favor of or against the boundaries of the said district, to show that the proposed improvement or improvements would or would not be of any public utility and would or would not be feasible or practicable, and the probable

cost of such improvement or improvements, or as to any other matter pertaining to the proposed district. Said county commissioners' court, or navigation board, shall have exclusive jurisdiction to hear and determine all contests and objections to the creation of such districts, and all matters pertaining to the creation and establishment of the same, and shall have exclusive jurisdiction in all subsequent proceedings of the district when organized, except as hereinafter provided, and may adjourn hearing on any matter connected therewith from day to day; and all judgments or decisions rendered by said court, or navigation board, in relation thereto shall be final, except as herein otherwise provided. [R. S. Art. 5961.]

610. Finding of Board at Hearing of Petition.—If, at the hearing of said petition, it shall appear to the commissioners' court or navigation board, as the case may be, that the proposed improvement is feasible and practicable, that it would be a public benefit and a public utility; and, if the court, or navigation board, as the case may be, shall approve the boundaries of the proposed district as set out in said petition, then the court, or navigation board, shall so find, and shall also find the amount of money necessary for said improvement or improvements and for all expenses incident thereto, and shall determine whether to issue bonds for said full amount or in the first instance for a less amount, and shall specify the amount of bonds to issue, the length of time the bonds shall run, and the rate of interest said bonds shall bear, and cause its findings to be recorded in the records of the commissioners' court, or minutes of the navigation board, as the case may be. If the court, or navigation board, shall find that the proposed improvement is feasible and practicable, that it would be a public benefit and a public utility, but does not approve the boundaries of the proposed district as set forth in the petition, the court, or navigation board, shall so find, and shall also find the amount of money necessary for said improvement or improvements, and for all expenses incident thereto, and shall determine whether to issue bonds for said full amount or in the first instance for a less amount, and shall specify the amount of bonds to issue, the length of time the bonds shall run, and the rate of interest said bonds shall bear, and cause its findings to be entered of record, together with a map thereof. Providing, however, that before any change is made by said court, or navigation board, as the case may be, of the boundaries, notice and a hearing thereof shall be given and had as provided for in Article 5956 of this chapter. If the court, or navigation board, shall find that the proposed improvement is not feasible

ible or practicable, or that it would not be a public benefit or public utility, and that the establishment of such navigation district is therefore unnecessary, then the court, or navigation board, shall enter such findings of record and dismiss the petition at the cost of petitioners, but the order dismissing said petition shall not prevent or conclude the presentation at a later date of a similar petition. [R. S. Art. 5962.]

611. Navigation District Election; Form of Ballot.—After the hearing upon the petition, as herein provided, if the court, or navigation board, as the case may be, shall find in favor of the petitioners for the establishment of a navigation district according to the boundaries as set out in said petition, or as changed or modified as above provided by the said court, or navigation board, the commissioners' court of said county shall order an election, in which order provision shall be made for submitting to the qualified property taxpaying voters resident in said district whether or not such navigation district shall be created, and whether or not a tax shall be levied sufficient to pay the interest and provide a sinking fund sufficient to redeem said bonds at maturity, said order specifying the amount of bonds to be issued, together with the length of time the bonds shall run, and the rate of interest said bonds shall bear as said matters have been determined by the commissioners' court, or navigation board, as the case may be, under the provisions of Article 5962 of this chapter. Said election to be held within such proposed navigation district at the earliest legal time; at which election there shall be submitted the following propositions and none other: "For the navigation district, and issuance of bonds and levy of tax in payment thereof;" "Against the navigation district, and issuance of bonds and levy of tax in payment thereof." Provided, that said bonds shall not exceed in amount one-fourth of the assessed valuation of the real property of such district as made by the last annual assessment thereof for State and county taxation. [R. S. Art. 5963.]

612. Notice of Navigation District Election.—Notice of such election, stating the time and place of holding the same, shall be given by the clerk of the county court by posting notices thereof in four public places in such proposed navigation district, and one at the court house door of the county in which such district is situated, for thirty days prior to the date set for the election. Such notices shall contain the proposition to be voted upon as set forth in Article 5963 of this chapter, and shall also specify the purpose for which said bonds are to be issued, and the amount of said

bonds, and shall contain a copy of the order of the court ordering the election. [R. S. Art. 5964.]

613. Navigation District Election to Conform to General Election Law.—The manner of conducting said election shall be governed by the election laws of the State of Texas, except as herein otherwise provided. None but resident property taxpayers, who are qualified voters of said proposed district, shall be entitled to vote at any election on any question submitted to the voters thereof by the county commissioners' court at such election. The county commissioners' court shall create and define, by an order of the court, the voting precincts in the proposed navigation district, and shall name a polling place or places within said precincts, taking into consideration the convenience of the voters in the proposed navigation district, and shall also select and appoint the judges and other necessary officers of the election, and shall provide one and one-half times as many ballots as there are qualified resident property taxpaying voters within such navigation district. Said ballot shall have printed thereon the words and none others: "For the navigation district, and issuance of bonds and levy of tax in payment thereof"; "Against the navigation district, and issuance of bonds and levy of tax in payment thereof." [R. S. Art. 5965.]

614. Qualification of Electors; Form of Oath Before Voting.—Every person who offers to vote in any election held under the provisions of this chapter shall first take the following oath before the presiding judge of the polling place wherein he offers to vote, and the presiding judge is hereby authorized to administer same: "I do solemnly swear (or affirm) that I am a qualified voter of.....county, and that I am a resident property taxpayer of the proposed navigation district voted on at this election, and I have not voted before at this election." [R. S. Art. 5966.]

615. Commissioners' Court to Canvass Returns; Declare Result.—Immediately after the election, the presiding judge at each polling place shall make return of the result in the same manner as provided for in elections for State and county officers, and return the ballot boxes to the county clerk, who shall keep same in a safe place and deliver them, together with the returns from the several polling places, to the commissioners' court at its next regular session, or special session called for the purpose of canvassing the vote, and the county commissioners shall, at such session, canvass the vote; and, if it be found that a two-thirds majority of those voting at such election shall have been cast in favor of the navigation district and the issuance of bonds and levy of tax, then the court shall

declare the result of said election to be in favor of said navigation district, and shall enter same in the minutes of the court as follows:

"Commissioners' court of _____ county, Texas, _____ term, A. D. _____, in the matter of petition of _____ and _____ others, praying for the establishment of a navigation district, and issuance of bonds and levy of taxes in said petition fully described and designated by the name of _____ Navigation District _____ Be it known that an election called for that purpose in said district, held on the _____ day of _____, A. D. _____, a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the creation of said navigation district, and the issuance of bonds and the levy of a tax. Now, therefore, it is considered and ordered by the court that said navigation district be, and the same is hereby established by the name of _____ Navigation District, and that the bonds of said district in the amount of _____ dollars be issued, and a tax of _____ cents on the hundred dollars of valuation, or so much thereof as may be necessary, be levied upon all property within said navigation district, whether real, personal, mixed or otherwise, sufficient in amount to pay the interest on such bonds and provide a sinking fund sufficient to redeem them at maturity, and that if said tax shall at any time become insufficient for such purposes, same shall be increased until same is sufficient. The metes and bounds of said district, being as follows, to-wit: (Giving the metes and bounds.) [R. S. Art. 5967.]

616. Navigation Commissioners, How Appointed; Qualifications; Compensation, Term of Office.—After the establishment of any navigation district, as herein provided, the commissioners' court, or navigation board, as the case may be, shall appoint three navigation and canal commissioners, all of whom shall be residents of the proposed navigation district, who shall be freehold property taxpayers and legal voters of the county, whose duties shall be as hereinafter provided, and who shall each receive for their services such compensation as may be fixed by the commissioners' court and made of record. Said navigation and canal commissioners shall hold office for the term of two years, and until their successors have qualified, unless sooner removed by a majority vote of the county commissioners, or navigation board, as the case may be, for malfeasance or nonfeasance in office. Upon the expiration of the term of office of said navigation and canal commissioners, the commissioners' court, or navigation board, as the case may be, shall appoint their successors by a majority vote. Should any vacancy oc-

cur through the death or resignation or otherwise of any commissioner, the same shall be filled by the commissioners' court, or the navigation board, as the case may be. [R. S. Art. 5968.]

617. Oath of Commissioners of Navigation Districts.—Before entering upon their duties, all navigation and canal commissioners shall take and subscribe before the county judge an oath to faithfully discharge the duties of their office without favor or partiality, and to render a true account of their doings to the court, or navigation board, by which they are appointed whenever required to do so, which oath shall be filed by the county clerk and preserved as a part of the records of said navigation district. [R. S. Art. 5969.]

618. Bond of Navigation Commissioners.—Before entering upon their duties, each of the navigation and canal commissioners shall make and enter into a good and sufficient bond in the sum of one thousand dollars, payable to the county judge for the use and benefit of said navigation district, and conditioned upon the faithful performance of their duties. [R. S. Art. 5970.]

619. Organization of Navigation District Board; Quorum.—Said commissioners shall also organize by electing one of their number chairman and one secretary, and two of the commissioners shall constitute a quorum, and a concurrence of two shall be sufficient in all matters pertaining to the business of said district. [R. S. Art. 5971.]

620. Navigation District Engineers Appointed; Duties; Compensation; United States Government Aid; Proceedings in Case of.—Said commissioners shall have authority to employ a competent engineer, whose term of office shall be at the will of said commissioners, and who shall receive such compensation as may be determined by said commissioners. It shall be the duty of the engineer to make all necessary surveys, examinations, investigations, maps, plans and drawings with reference to the proposed improvements. He shall make estimate or estimates of the cost of same, shall supervise the work of improvement, and shall do and perform all such duties as may be required of him by the commissioners. Provided, that if the river, creek, stream, bay, canal, or waterway, to be improved is navigable or the improvement proposed be, of such nature as requires the permission or consent of the government of the United States, or any department or officer of the government of the United States, the navigation and canal commissioners shall be authorized to obtain the required permission or consent of the government of the United States, or any proper officer or department thereof; and, in lieu of the employment of an

engineer as herein provided, or in addition thereto, the navigation and canal commissioners shall have power to adopt any survey of the river, creek, canal, stream, bay, or waterway theretofore made by the government of the United States, or any department thereof, and to arrange for surveys, examinations and investigations of the proposed improvement, and for supervision of the work of improvement by the government of the United States, or the proper department or officer thereof; provided, that said commissioners shall have full power and authority to co-operate and act with the government of the United States, or any officer or department thereof, in any and all matters pertaining to or relating to the construction and maintenance of said canals, and the improvement and navigation of all such navigable rivers, bays, creeks, streams, canals, and waterways, whether by survey, work or expenditure of money made or to be made either by said navigation and canal commissioners, or by said government of the United States, or any proper officer or department thereof, or by both; and, to the end that the said government of the United States may aid in all such matters, the said commissioners shall have authority to agree and consent to the said government of the United States entering upon and taking management and control of said work, in so far as it may be necessary or permissible under the laws of the United States, and the regulations and orders of any department thereof. [R. S. Art. 5972.]

621. Commissioners' Court to Issue Bonds, When and How.—When said commissioners shall have determined the cost of the proposed improvement or improvements, all of the expenses incident thereto and cost of maintenance thereof, they shall certify to the commissioners' court of the county in which such district is situated the amount of bonds necessary to be issued; and thereupon the said court, at a regular or special meeting, shall make an order directing the issuance of navigation bonds for such navigation district in the amount so certified; provided, that the amount of bonds shall not exceed the amount authorized by the election theretofore held. In the event the proceeds of bonds issued by such navigation district should be insufficient to complete the proposed improvement or construction, or in the event said commissioners shall determine to make other and further construction or improvements, or shall require additional funds with which to maintain the improvements made, they shall certify to the commissioners' court of the county in which such district is situated the necessity for an additional bond issue, stating the amount required and the purpose of the same, the rate of interest of said

bonds and the time for which they are to run; whereupon the commissioners' court shall issue such bonds, unless the amount previously authorized shall have been exhausted, in which case the commissioners' court shall order an election on the issuance of said bonds to be held within such navigation district at the earliest possible legal time, and in the manner hereinbefore provided for the original issue of bonds, at which election there shall be submitted the following propositions and none other: "For the issuance of bonds, and levy of tax in payment thereof"; "Against the issuance of bonds, and levy of tax in payment thereof." Notices of such election shall be given as provided in Article 5964 of this chapter; and the election shall be held and conducted in the manner provided in Articles 5965 and 5966 of this chapter. Only those who are qualified property taxpaying voters, as provided in this chapter, shall vote at such election, and the returns of such election shall be canvassed as provided in Article 5964 (5967) of this chapter. [R. S. Art. 5973.]

622. Navigation Bonds, When Issued; Assessments, Limitation of.—If, upon a canvass of the vote, the commissioners' court shall determine that a two-thirds majority of the votes cast at said election shall have been cast in favor of the issuance of bonds and levy of tax, the said court shall make an order directing the issuance of said bonds and the levy of tax; provided, however, that the outstanding bonds and the additional bonds so ordered shall not exceed in amount one-fourth of the assessed value of the real property in such district, as shown by the last annual assessment thereof made for State and county taxation. [R. S. Art. 5974.]

623. Navigation Bonds, Form of; Denominations, Term.—All bonds issued under the provisions of this chapter shall be issued in the name of the navigation district, signed by the county judge and attested by the clerk of the county court, with the seal of the commissioners' court affixed thereto, and such bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars each, and such bonds shall bear interest at a rate not to exceed five per cent per annum. Such bonds and interest shall by their terms be made payable at the county treasurer's office of the county in which such navigation district is located, or elsewhere, as may be fixed by said navigation and canal commissioners; and no bonds shall be made payable more than forty years after date. [R. S. Art. 5975.]

624. Attorney General to Certify to Validity of Navigation Bonds.—Any navigation district in the State of Texas desiring to issue bonds in accordance with this chapter shall, before such

bonds are offered for sale, forward to the Attorney General a copy of the bonds to be issued, a certified copy of the order of the commissioners' court levying the tax, copy of the order of the commissioners' court levying the tax to pay interest and provide a sinking fund, and a statement of the total bonded indebtedness of such navigation district as such, including the series of bonds proposed and the assessed value of property for the purpose of taxation, as shown by the last official assessment by the county, together with such other information as the Attorney General may require; whereupon it shall be the duty of the Attorney General to carefully examine said bonds in connection with the facts and the Constitution and laws on the subject of the execution of such bonds; and, if as the result of such examination the Attorney General shall find that such bonds were issued in conformity with the Constitution and laws, and that they are valid and binding obligations upon such navigation district by which they are issued, he shall so officially certify. [R. S. Art. 5976.]

625. Certificate of Attorney General; Effect of.—When said bonds have been examined by the Attorney General, and his certificate issued to that effect, they shall be registered by the State Comptroller, in a book to be kept for that purpose; and the certificate of the Attorney General to the validity of such bonds shall be preserved of record for use in the event of litigation. Such bonds, after being approved by the Attorney General, and after having been registered in the Comptroller's office as herein provided, shall thereafter be held in every action, suit or proceeding in which their validity is or may be brought in question, prima facie valid and binding obligations. And, in every action brought to enforce collection of said bonds or interest thereon, the certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received as prima facie evidence of the validity of such bonds, together with the coupons thereto attached; provided, that the only defense that can be offered against the validity of said bonds or coupons shall be forgery or fraud. But this article shall not be construed to give validity to any such bonds or coupons as may be issued in excess of the limit fixed by the Constitution, or contrary to its provisions, but all such bonds shall, to the extent of such excess, be held void. [R. S. Art. 5977.]

626. Record of Bonds to Be Kept; Duties and Fees of Clerk.—Before issuing any bonds under the provisions of this chapter, the county commissioners' court shall provide a well bound book, in which a record shall be kept by the county clerk of all bonds issued, with their numbers, amount, rate of interest, and date of

issue, when due, where payable, and amount received for the same, and the annual rate per cent assessment made each year to pay the interest on said bonds and provide a sinking fund for their payment. And said book shall at all times be open to the inspection of all parties interested in said district, either as taxpayers or bond holders or otherwise; and, upon the payment of any bond, an entry thereof shall be made in said book. The county clerk shall receive for his services in recording all bonds and other instruments of the navigation district the same fees as provided by law for other like records. [R. S. Art. 5978.]

627. Navigation Bonds Sold, How; Limitations on Sale.—When such bonds have been registered, as provided for in the preceding article of this chapter, the chairman of the navigation and canal commission shall offer for sale and sell said bonds on the best terms and for the best price possible, but none of said bonds shall be sold for less than the face par value thereof and accrued interest thereon; and, as fast as said bonds are sold, all moneys received therefor shall be paid to the county treasurer, and shall by him be placed to the credit of such navigation district. [R. S. Art. 5979.]

628. Chairman of Navigation Board to Give Bond.—Before the said chairman of the navigation and canal commissioners shall be authorized to sell any of the navigation bonds, he shall execute a good and sufficient bond, payable to the county judge or his successors in office, to be approved by the county commissioners' court of said county, for an amount not less than the amount of the bonds issued, conditioned upon the faithful discharge of his duties. [R. S. Art. 5980.]

629. Cost of Proceedings to Establish District; How Provided.—All expenses of any kind, after the filing of the original petition, necessarily incurred in connection with the creation, establishment and maintenance of any navigation district organized under the provisions of this chapter, shall be paid out of the "Construction and Maintenance Fund" of such navigation district; which fund shall consist of all moneys received from the sale of bonds and all other amounts received by said district from whatever source, except the tax collections applied to the sinking fund and payment of interest on the navigation bonds; provided, that, should the proposition of the creation of such navigation district and issuance of bonds be defeated at the election called to vote upon same, then all expenses up to and including said election shall be paid in the following manner: When the original petition praying for the establishment of a navigation district is filed with the county com-

missioners' court, it shall be accompanied by five hundred dollars in cash, which shall be deposited with the clerk of said county commissioners' court, and by him held until after the result of the election for the creation of said navigation district has been declared and entered of record by the commissioners' court, as hereinbefore provided; and, should the result of said election be in favor of the establishment of said district, then the said five hundred dollars shall be by said clerk returned to the signers of said original petition, or their agent or attorney; but, should the result of said election be against the establishment of said district, then the said clerk shall pay out of the said five hundred dollars, upon vouchers signed by the county judge, all costs and expenses pertaining to the said proposed district up to and including the said election, and shall return the balance, if any, of said five hundred dollars to the signers of said original petition, or their agent or attorney. [R. S. Art. 5981.]

630. Duty of Commissioners' Court to Levy Tax, When. Whenever such navigation district bonds shall have been voted, the commissioners' court shall levy and cause to be assessed and collected improvement taxes upon all property within said navigation district, whether real, personal, mixed or otherwise, and sufficient in amount to pay the interest on such bonds, together with an additional amount to be annually placed in a sinking fund sufficient to discharge and redeem said bonds at their maturity, and in all such navigation districts which have heretofore been created or may hereafter be created, the commissioners' court of the respective counties wherein said districts may be created, shall be and are hereby authorized to levy and cause to be assessed and collected for the maintenance, operation and up-keep of such navigation district and the improvements constructed by said district, an annual tax not to exceed ten cents on the one hundred dollar valuation upon all property within such navigation district, whether real, personal, mixed or otherwise. [Acts 1917, p. 67; R. S. Art. 5982.]

631. Available Sinking Fund, How Invested.—If advisable, the sinking fund shall, from time to time, be invested by the commissioners' court of the county in such county, municipal, district or other bonds as shall be approved by the Attorney General of the State. [R. S. Art. 5983.]

632. Navigation Tax Proceedings; Compensation of Assessor.—The county commissioners' court shall provide all necessary additional books for the use of the assessor and collector of taxes and the county clerk for such navigation district, and charge the cost of same to the said navigation district. It shall be the duty of the

county tax assessor, when ordered to do so by the commissioners' court, to assess all property within such navigation district and list the same for taxation in the books or rolls furnished him by said commissioners' court for that purpose, and return said books or rolls at the same time when he returns the other books or rolls of the State and county taxes for correction and approval; and, if the said commissioners' court shall find said books or rolls correct, they shall approve the same, and, in all matters pertaining to the assessment of property for taxation in said district, the tax assessor and board of equalization of the county in which said district is located shall be authorized to act, and shall be governed by the laws of Texas for assessing and equalizing property for State and county taxes, except as herein provided. All taxes authorized to be levied by this chapter shall be a lien upon the property upon which said taxes are assessed, and said taxes may be paid and shall mature and be paid at the time provided by the laws of this State for the payment of State and county taxes; and all the penalties provided by the laws of this State for the non-payment of State and county taxes shall apply to all taxes authorized to be levied by this chapter. The tax assessor shall receive for said services such compensation as the said navigation and canal commissioners shall deem proper; provided, that said county assessor shall in no event be allowed more than he is now allowed by law for the like services. Should the tax assessor fail or refuse to comply with the orders of the commissioners' court requiring him to assess and list for taxation all the property in such navigation districts, as herein provided, he shall be suspended from the further discharge of his duties by the commissioners' court of his county, and he shall be removed from office in the mode prescribed by law for the removal of county officers. [R. S. Art. 5984.]

633. Compensation of Tax Collector; Additional Bond Required.

—The tax collector of the county shall be charged by the county commissioners' court with the assessment rolls of the navigation district, and he shall be allowed no more compensation for the collection of said taxes than he is now allowed for the collection of other taxes, same to be fixed by the navigation and canal commissioners. The county commissioners' court shall require the tax collector of the county to give an additional bond or security in such a sum as they may deem proper and safe to secure the collection of said taxes; and, in all matters pertaining to the collection of taxes levied under the provisions of this chapter, the tax collector shall be authorized to act and shall be governed by the

laws of Texas for the collection of State and county taxes, except as herein provided; and suits may be brought for the collection of said taxes and the enforcement of the tax liens created by this chapter. Should any collector of taxes fail or refuse to give such additional bond or security, as herein provided, when requested by the commissioners' court, within the time prescribed by law for such purposes, he shall be suspended from office by the commissioners' court of his county, and immediately thereafter be removed from office in the mode prescribed by law. [R. S. Art. 5985.]

634. Duty of Tax Collector to Make List of Delinquents; Tax Sales.—It shall be the duty of the tax collector to make a certified list of all delinquent property upon which the navigation tax has not been paid, and return the same to the county commissioners' court, which shall proceed to have the same collected by the sale of such delinquent property in the same manner, both by suit and otherwise, as is now provided for the sale of property for the collection of State and county taxes; and, at the sale of any property for any delinquent tax, the navigation and canal commissioners may become the purchasers of the same for the benefit of the navigation district. [R. S. Art. 5986.]

635. Duty of County Treasurer to Open Account with Navigation District.—It shall be the duty of the county treasurer to open an account with the navigation district, and to keep an accurate account of all moneys received by him belonging to such district and of all amounts paid out by him. He shall pay out no money, except upon a voucher signed by the chairman or any two of the said navigation and canal commissioners, and he shall carefully preserve on file all orders for the payment of money; and, as often as required by the said commissioners, or the county commissioners' court, he shall render a correct account to them of all matters pertaining to the financial condition of such district. [R. S. Art. 5987.]

636. County Treasurer to Execute Additional Bond.—The county treasurer shall execute a good and sufficient bond, payable to the navigation and canal commissioners of such district, in a sum equal to twice the amount of funds he will have in his hands as treasurer of such district, at any time as estimated by said navigation and canal commissioners, such bond to be conditioned for the faithful performance of his duty as treasurer of such district and to be approved by said navigation and canal commissioners; provided, whenever any bonds are voted by such navigation district the county treasurer before receiving the proceeds of the sale thereof shall execute additional good and sufficient bond payable to the

navigation and canal commissioners of such district in the sum equal to twice the amount of bonds so issued, which bond shall likewise be conditioned and approved as aforesaid, but such additional bond shall not be required after such treasurer shall have properly disbursed the proceeds of such bond issue; and the county treasurer shall be allowed such compensation for his services as treasurer for such navigation district as may be determined by said navigation and canal commissioners not exceeding the same per cent as is now authorized by law for his services as county treasurer. [Acts 1917, p. 67; R. S. Art. 5988.]

637. Right of Eminent Domain Conferred on Districts.—The right of eminent domain is hereby conferred upon all navigation districts established under the provisions of this chapter for the purpose of condemning and acquiring the right of way over and through any and all lands, private or public, except property used for cemetery purposes, necessary for the improvement of any river, bay, creek, or stream, and the construction and maintenance of any canal or waterway, and for any and all purposes authorized by this chapter. All such condemnation proceedings shall be instituted under the direction of the navigation and canal commissioners, and in the name of the navigation district, and the assessing of damages shall be in conformity to the statutes of the State of Texas for condemning and acquiring the right of way by railroads; provided, that no appeal from the finding and assessment of damage by the commissioners appointed for that purpose shall have the effect of causing a suspension of work by the navigation commissioners in prosecuting the work of improvement in all of its details; provided, that no right of way can be condemned through any part of an incorporated city or town without the consent of the lawful authorities of such city or town. [R. S. Art. 5989.]

638. Board May Acquire Property for Navigation Purposes.—The navigation and canal commissioners of any district are hereby empowered to acquire the necessary right of way and property of any kind for all necessary improvements contemplated by this chapter by gift, grant, purchase or condemnation proceedings. [R. S. Art. 5990.]

639. Navigation Commissioners May Enter Lands to Make Surveys.—The navigation and canal commissioners of any district, and the engineers, from the time of their appointment, are hereby authorized to go upon any lands lying within said district for the purpose of examining the same, making plans, surveys, maps and profiles, together with all necessary teams, help, tools and instru-

ments, without subjecting themselves to action of trespass. [R. S. Art. 5991.]

640. Work, How Done; Contracts, How Let When United States Government Fails to Act.—If the improvement or improvements be not carried out and performed by the government of the United States, as herein provided, the contract or contracts for such improvement or improvements shall be let by the navigation and canal commissioners, and the same shall be awarded to the lowest and best responsible bidder, after giving notice by advertising the same in one or more newspapers of general circulation in the State of Texas once a week for four consecutive weeks, and by posting notices for at least thirty days in five public places in the county, one of which shall be at the court house door, and at least two of which shall be within said navigation district. Nothing herein contained shall prevent the making of more than one improvement, and where more than one improvement is to be made, the contract may be let separately for each or one contract for all such improvements. [R. S. Art. 5992.]

641. Bids for Work, How Awarded.—Any person, corporation, or firm, desiring to bid on the construction of any work advertised for as provided under the preceding article of this chapter, shall, upon application to the navigation and canal commissioners, be furnished the survey, plans and estimates for the said work, and all bids or offers for any of such work shall be in writing and sealed and delivered to the chairman of the navigation and canal commissioners, together with a certified check for at least five per cent of the total amount bid, which shall be forfeited to the district in case the bidder refuses to enter into a proper contract, if his bid is accepted. Any and all bids may be rejected at the discretion of the navigation and canal commissioners. [R. S. Art. 5993.]

642. All Contracts to Be in Writing and Filed.—All contracts made by the navigation and canal commissioners shall be reduced to writing and signed by the contractors, and navigation and canal commissioners, or any two of said commissioners, and a copy of same filed with the county clerk for reference. [R. S. Art. 5994.]

643. Navigation District Contractor's Bond.—The party, firm, or corporation, to whom any such contract is let, shall give bond, payable to the navigation and canal commissioners for said district, in twice the amount of the contract price, conditioned that he, they or it, will faithfully perform the obligations, agreements and covenants of their contract, and that in default thereof will pay to said district all damages sustained by reason thereof. Said bond shall

be approved by such navigation and canal commissioners. [R. S. Art. 5995.]

644. Work Supervised by Navigation Engineer; His Report.—All work contracted for by the navigation and canal commissioners, unless done under the supervision of the government of the United States, or the proper department or officer thereof, shall be done under the supervision of the engineer; and, when the work is completed according to contract, the engineer shall make a detailed report of the same to the navigation and canal commissioners, showing whether the contract has been fully complied with, according to its terms, and if not in what particular it has not been so complied with. [R. S. Art. 5996.]

645. Navigation District Commissioners to Inspect Work; Payment, How Made.—The commissioners shall have the right, and it is hereby made their duty, during the progress of the work being done under contract, to inspect the same; and, upon the completion of any contract, they shall draw a warrant on the county treasurer for the amount of the contract price in favor of the contractor or his assignee, which warrant shall be paid out of the construction and maintenance fund of such district; provided, that, if the navigation and canal commissioners shall deem it advisable, they may contract for the work to be paid for in partial payments as the work progresses; but such partial payments shall not exceed in the aggregate eighty per cent of the total amount to be paid under the contract, the amount of work completed to be shown by a certificate of the engineer; and provided, further, that nothing in this article shall affect the provisions of this chapter providing for the carrying out and performing of the improvement or improvements by the government of the United States. [R. S. Art. 5997.]

646. Navigation District Commissioners' Report of Work to Contain What.—The commissioners shall make an annual report of their acts and doings as such commissioners, and file the same with the clerk of the county court on or before the first day of January, each year; which report shall show in detail the kind, character and amount of work done in the district, the cost of same, and the amount paid out on order, for what purpose paid, and other data necessary to show the condition of improvements made under the provisions of this chapter. [R. S. Art. 5998.]

647. Navigation District Commissioners May Employ Assistant Engineers and Legal Counsel.—The commissioners are hereby authorized and empowered to employ such assistant engineers and other employes as may be necessary, paying such compensation as

they may determine; and the said commissioners are authorized to employ counsel to represent such district in the preparation of any contract, or the conducting of any proceedings in or out of court, and to be the legal adviser of the navigation and canal commissioners on such terms and for such fees as may be agreed upon by them; and such commissioners shall have the authority to draw warrant or warrants in payment of such legal services, and for the salary of the engineer, his assistant, or any other employes, and for all expense incident and pertaining to the navigation district. [R. S. Art. 5999.]

648. Unlawful for Officers to Be Interested in Contracts.—

Neither the county judge, nor any county commissioner, nor member of the navigation board, nor the navigation and canal commissioners or engineer shall be directly or indirectly interested for themselves, or as agents for any one else, in the contract for the construction of any work to be performed by such navigation district. [R. S. Art. 6000.]

649. Navigation District Commission May Sue and Be Sued.—

All navigation districts established under this chapter may, by and through the navigation and canal commissioners, sue and be sued in all courts of this State in the name of such navigation district; and all courts of this State shall take judicial notice of the establishment of all such districts. [R. S. Art. 6001.]

CHAPTER XXIII.

ASSESSMENT AND COLLECTION OF TAXES IN DRAINAGE AND WATER IMPROVEMENT DISTRICTS.

(From Chapter 3, Title 47 and Acts 1917.)

	SEC.		SEC.
Assessment and Collection of Drainage District Taxes—Re- port, Accounting and Disburse- ment, etc.	650	Compensation of Attorneys Bringing Tax Suits.....	670
Liens, Remedies, etc., for Col- lecting Assessments the Same as Other Taxes.....	651	10 Per Cent Penalty for Failure to Pay Taxes.....	671
Taxes Collected to Be Known as Drainage Fund	652	How Owner May Redeem Prop- erty Returned Delinquent.....	672
Construction in Drainage Dis- tricts to Be Let to Lowest Re- sponsible Bidder, When.....	653	Water Improvement Bonds—Tax to Pay Interest on.....	673
Water Improvement Districts— Duty of Tax Collector.....	654	Depository to Be Selected for Water Improvement Districts..	674
Qualification of Assessor and Col- lector of Water Improvement District	655	Duty of Depository to Make Cer- tain Reports	675
Duty of Assessor and Collector of Water Improvement Dis- tricts	656	Duty of Water Improvement Dis- trict Directors to Maintain Of- fice	676
Assessor of Water Improvement District to Furnish List of Names	657	Duty of Directors as to Bonds Previously Issued, etc.	677
Duty to Make Up Rolls—Disposi- tion of Same.....	658	Certain Laws Repealed—Districts Heretofore Established Vali- dated	678
Duty of Assessor and Collector of District to Collect Taxes....	659	Lands Relieved From Taxation, When	679
District Assessor and Collector to Be Charged With Tax Rolls	660	Taxes to Remain in Force from Year to Year, etc.....	680
Assessment to Make on all Prop- erty in District, When.....	661	Tax for Interest, Sinking Fund and Expenses in Drainage Dis- tricts; Refundment to Con- struction and Maintenance Fund; Investment of Sinking Fund; Powers of Assessor and Collector; Equalization; Lien, etc.	681
Water Improvement Taxes Due and Payable Nov. 1.....	662	Additional Tax Books; Assess- ment on Property in Drainage District; Penalty; Forfeiture..	682
District Taxes Becoming Delin- quent to Remain a Lien on Lands	663	Collector Charged With Assess- ment Rolls in Drainage Dis- trict; Compensation; Bond Re- quired; Penalty for Failure to Give	683
Duty of Directors of Water Im- provement Districts to Cause Tax Collector to Prepare List of Delinquents	664	Duty of Drainage District Col- lector to Report Delinquents to Commissioners' Court; Duty of Court	684
Duty of Directors to Cause Delin- quent Tax Record to Be Pre- pared	665	Separate Tax Assessor and Board of Equalization in Drainage Districts; Election; Appoint- ments; Powers and Duties.....	685
Shall Publish Delinquent Tax Record	666	Levy of Annual Tax for Main- tenance of Improvements; Limitations of Amount.....	686
Water Improvement Directors to Employ Attorney to Sue for Taxes, When	667	Compensation of Drainage Trus- tee; of County Assessor and Collector; Provisions for.....	687
Who Shall Be Made Parties De- fendant in Tax Suits.....	668		
Sheriff's Duty to Execute Deeds to Purchasers	669		

650. Assessment and Collection of Drainage District Taxes; Report, Accounting and Disbursement, Etc.—It shall be the duty of the tax assessor and tax collector of each county to assess and collect the taxes herein provided as in other cases; and the tax collector shall report to the county treasurer the amount of taxes collected under the provisions of this chapter; and it shall be the duty of the county treasurer to keep a separate account of all taxes paid over to him by the collector under the provisions of this chapter and it shall also be the duty of the county treasurer to pay all warrants drawn by the clerk of the county court under an order directed by the commissioners' court of the county drawn upon said funds, and make his report of said funds as in other cases. [R. S. Art. 2533.]

651. Liens, Remedies, Etc., for Collecting Assessments the Same as Other Taxes.—All liens, remedies and modes of procedure, by the laws of the State of Texas now provided for the collection of ad valorem taxes and taxes upon real estate, shall obtain and be in force and apply for the collection for the assessments provided in this chapter for the construction of said drains. [R. S. Art. 2534.]

652. Taxes Collected to Be Known as Drainage Fund.—All taxes and money collected under the provisions of this chapter shall be known as the drainage fund. [R. S. Art. 2535.]

653. Construction in Drainage Districts to Be Let to Lowest Responsible Bidder, When.—When the commissioners' court of any county shall have, by proper order, established any drain or ditch, the construction of the same shall be let by the said commissioners' court to the lowest responsible bidder, after suitable advertising, as a whole, or in such sections or subdivisions as the board may deem most advantageous. [R. S. Art. 2536.]

654. Water Improvement Districts—Duty of Tax Collector.—It shall be the duty of the tax collector of the county before a water improvement district is formed, and of the tax collector of said district after its organization, to make out a certified list of the property taxpayers of said district, and to furnish same to the presiding judge of the election, and before any person is entitled to vote at any election under this act, his name must appear in said certified list of property taxpayers, unless such person acquired property in said district after the 1st day of January of the preceding year, and in such event before he shall be permitted to vote he must take the following oath, to be administered by the presiding judge of the polling place where he offers to vote, and for such purpose the presiding judge is hereby authorized to administer the

same: "I do solemnly swear (or affirm) that I am a qualified voter of _____ county, and that I am a resident property taxpayer of the district or proposed district, that I was not subject to pay property tax in said district for the preceding year and have not voted before at this election." [Sec. 8, Chap. 87, Acts 1917.]

655. Qualification of Assessor and Collector of Water Improvement District.—The office of assessor and collector herein provided for shall be filled by the same person who hereafter shall be appointed by the directors, and before entering upon his duties as such assessor and collector, he shall qualify by making and entering into a good and sufficient bond to be approved by the directors, in the sum of five thousand (\$5,000.00) dollars, conditioned for the faithful performance of his duties as assessor and collector, and for the paying over to the district depository of all sums of money coming into his hands as such collector; provided, however, that the directors shall require additional security in the event in their judgment the same may become necessary; and such assessor and collector shall be a resident of the district, or of any town within the general boundaries of the district, and a qualified voter in the county, and shall receive such compensation for his services as may be provided by the board of directors, not to exceed fifteen hundred (\$1,500.00) dollars per annum; provided, that in case any district organized hereunder is appointed fiscal agent of the United States or by the United States is authorized to make collections of money for and on behalf of the United States in connection with any Federal reclamation project, such assessor and collector and each director shall execute a further additional official bond in such sum as the secretary of the interior may require, conditioned for the faithful discharge of the duties of his respective office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appointment or authorization; such additional bonds to be approved, recorded and filed as herein provided for other official bonds, and any such additional bonds may be sued on by the United States or any person injured by the failure of such officer or the district to fully, promptly and completely perform their respective duties; provided, that the board of directors may require the assessor and collector to perform other duties than those herein imposed on him as assessor and collector of taxes, and when such other duties are so required of him, he shall be paid such additional compensation as shall be fixed by the board of directors, but in such event it shall never exceed the maximum salary herein provided. [Sec. 15, Chap. 87, Acts 1917.]

656. Duty of Assessor and Collector of Water Improvement District.—Immediately upon the qualification of the assessor and collector, as hereinbefore provided, he shall enter upon the discharge of his duties, and shall at once proceed to make an assessment of all the taxable property, both real, personal and mixed, in his said district; and such assessment shall be made annually thereafter. Said assessment shall be made upon blanks to be provided by the directors for such district. Said assessment shall consist of a full statement of all property owned by the party rendering same in said district and subject to taxation therein, and shall state the full value thereof. There shall be attached to each such assessment an affidavit made by the owner or his agent rendering said property for taxation to the effect that said assessment or rendition contains a true and complete statement of all property owned by the party for whom said rendition is made in said district and subject to State and county taxation therein; and in addition to all such assessments or renditions made by the owner or agents of such property, the tax assessor shall make out similar lists of all property not rendered for taxation in such districts that is subject to State and county taxation therein. Each and every person, partnership or corporation owning taxable property in such district shall render same for taxation to the assessor when called upon so to do, and if not called upon by the assessor, the owner shall on or before June 1 of each year nevertheless render for taxation all property owned by him in the district subject to taxation. And all laws and penal statutes of this State providing for securing the rendition of property for State and county taxes, and providing penalties for the failure to render such properties shall apply to all persons, partnerships, or corporations owning or holding property in any such district. The tax assessor shall have authority to administer oaths to fully carry out the provisions of this section. [Sec. 25, Chap. 87, Acts 1917.]

657. Assessor of Water Improvement District to Furnish List of Names.—The assessor for such district, at the same time that he delivers to said board his lists and books, shall also furnish to said board a certified list of the names of all persons who either refuse to swear to, or to sign the oath or affirmation as required by this law, together with the list of the property of such persons situated within said district who have failed or refused to list their property, as made by him through other information, and said board shall examine the list and appraise the property so listed by the assessor. [Sec. 30, Chap. 87, Acts 1917.]

658. Duty to Make up Rolls; Disposition of Same.—After the return to the assessor and collector of the assessment lists and books duly approved by the board of equalization, as hereinbefore provided for, the said assessor and collector shall make up the assessment of all taxable property situated in said district upon duplicate rolls and after the approval of said rolls by the board of equalization, he shall retain one of same in his office and shall deliver the other copy to the directors of said district, to be kept by them as a permanent record in their office, and all lists and books of said assessor shall be caused to be substantially bound and by him kept as a permanent record of his office, and be delivered, together with all other records of his office to his successor, upon his election and qualification, or, in case of a vacancy in such office to the directors for said district. [Sec. 34, Chap. 87, Acts 1917.]

659. Duty of Assessor and Collector of District to Collect Taxes.—The assessor and collector shall collect all taxes due to said district, and shall, at the expiration of each week, pay over to the depository selected by said district all moneys by him collected, and shall report to the directors for such district on the fourth Saturday in every month all moneys so collected by him and paid over to the depository as hereinbefore provided, and shall perform all such other duties, and in such manner and according to such rules and regulations as the board of directors may prescribe and for the convenience of the persons, firms or corporations oweing such tax, shall keep and maintain an office with the board of directors for such district, where all such taxes may be paid. [Sec. 35, Chap. 87, Acts 1917.]

660. District Assessor and Collector to Be Charged With Tax Rolls.—The assessor and collector shall be charged by the directors for such district, upon a permanent finance ledger to be kept for said purpose by said district, with the total assessment as shown by the assessment rolls; and proper credit shall be given to the assessor and collector for all sums of money paid over to the depository, as shown by his monthly reports as hereinbefore provided for, and upon the final annual settlement, the said assessor and collector shall make up a full complete report of all taxes that have not been collected, which said report shall be audited by said board of directors, and proper credits given therefor, and such annual settlements shall be made on the first Monday in September of each year. [Sec. 36, Chap. 87, Acts 1917.]

661. Assessment to Be Made on All Property in District, When.—The assessment provided for in this Act shall be made upon all property subject to taxation in said district on the first day of

January of each year, and such assessment shall be completed and the lists and books ready to deliver on or before the first day of June of each year. [Sec. 37, Chap. 87, Acts 1917.]

662. Water Improvement Taxes Due and Payable Nov. 1.—All taxes provided for by this Act shall become due and payable on the first day of November of each year and shall be paid on or before the 31st day of January thereafter. [Sec. 39, Chap 87, Acts 1917.]

663. District Taxes Becoming Delinquent to Remain a Lien on Lands.—All lands or other property which have been returned delinquent, or which may hereafter be returned delinquent shall be subject to the provisions of this Act and said taxes shall remain a lien upon said land although the owner be unknown, or though it be listed in the name of a person not the actual owner, and though the ownership be changed, the land may be sold under the judgment of the court for all taxes, interest, penalty and cost shown to be due by such assessment for any preceding year. [Sec. 40, Chap. 87, Acts 1917.]

664. Duty of Directors of Water Improvement Districts to Cause Tax Collector to Prepare List of Delinquents.—It shall be the duty of the directors of such district to cause to be prepared by the tax collector, at the expense of such district, a list of all lands upon which the taxes remain unpaid on the 31st day of January of each year, and such list of lands shall be known as a delinquent tax roll, and such delinquent tax roll shall be delivered to the secretary of such district to be by him safely kept as a part of the record of his office. Such delinquent record shall carry a sufficient description to properly identify the land shown to be delinquent therein. Such description may be made by reference to lot or block number. [Sec. 41, Chap. 87, Acts 1917.]

665. Duty of Directors to Cause Delinquent Tax Record to Be Prepared.—Upon receipt of such delinquent tax roll by the directors of said district, the said directors shall cause said record to be recorded in a book which shall be labeled, "The delinquent tax record of.....county, water improvement district No.....," and shall be accompanied by an index showing the name of delinquents in alphabetical order. [Sec. 42, Chap. 87, Acts 1917.]

666. Shall Publish Delinquent Tax Record.—Upon the completion of said delinquent tax record by any such district, it shall be the duty of the directors thereof to cause the same to be published in some newspaper published in the county in which said district is situated for three consecutive weeks, but if no newspaper is published in the county, such list may be published in a newspaper outside of the county to be designated by such directors by a con-

tract duly entered into, and a publisher's fee of not to exceed twenty-five (\$.25) cents for each tract of land so advertised; and said publication, and any other publication, in a newspaper provided for in this Act may be proven by the affidavit of the proprietor of the newspaper in which the publication was made, his foreman or principal clerk, annexed to a copy of the publication, specifying the time when and the paper in which the publication was made. [Sec. 43, Chap. 87, Acts 1917.]

667. Water Improvement Directors to Employ Attorney to Sue for Taxes, When.—Twenty days after the publication of such notice, or as soon thereafter as practicable, the directors for such water improvement or irrigation district shall employ an attorney to bring suit in the name of the district in the district court of said county for the purpose of collecting all taxes, interest, penalty and costs due upon said land. Said petition shall describe all lands upon which taxes and penalties shall remain unpaid and the total amount of taxes and penalties due thereon with interest computed to the time fixed for the sale of said land at the rate of six (6%) per cent per annum, and shall pray for a judgment for said amount, and for the fixing, establishing and foreclosing of the lien existing against such land; that said lands be sold to satisfy said judgment for all taxes, interest, penalty and costs, and for such other relief to which such district may be entitled under the law and facts. All suits to enforce the collection of taxes as provided in this Act shall take precedence and have priority over all other suits pending in the district court. [Sec. 44, Chap. 87, Acts 1917.]

668. Who Shall Be Made Parties Defendant in Tax Suits.—The proper persons shall be made parties defendants in all such suits, and shall be served with process and other proceedings due therein as provided by law for suits of like character in the district court of this State, and in case of foreclosure, order of sale shall issue thereunder as in other cases of foreclosure; but if the defendant or his attorney shall, at any time before the sale, file with the sheriff or other officer in whose hands any such order of sale shall be placed a written request that the property described therein shall be divided and sold in less tracts than the whole, together with a description of such subdivision as the defendant may request, provided same are reasonable, and in such case, shall sell only as many subdivisions as may be necessary to satisfy the judgment, interest, penalties and cost, and after the payment of the taxes, interest, penalties and costs adjudged against it, the remainder of the purchase price, if any, shall be paid by the sheriff or other

officer executing said order of sale to the defendant or his attorneys of record. [Sec. 45, Chap. 87, Acts 1917.]

669. Sheriff's Duty to Execute Deeds to Purchasers.—In all cases in which lands may be sold for default in the payment of taxes under the preceding section, it shall be lawful for the sheriff or other officers selling the same, or any of his successors in office, to make a deed or deeds to the purchaser, or to any other person to whom the purchaser may direct the deed to be made, and any such deed shall be held in any court of law or equity in this State to vest a good and perfect title in the purchaser thereof subject to be impeached only for actual fraud. [Sec. 46, Chap. 87, Acts 1917.]

670. Compensation of Attorneys Bringing Tax Suits.—The attorneys representing such district in all suits against delinquent taxpayers that are provided for in this Act shall receive for such services such compensation to be paid out of delinquent taxes collected, as may be allowed by the directors for such district; provided, however, that in no event shall said fee exceed fifteen (15%) per cent of the amount of taxes so collected. The sheriffs, district clerks and other officers, executing any writ or performing any service in the foreclosure of delinquent taxes on any lands situated in such district shall receive the same fees for such services as is provided by statute as fees for like services performed in connection with the discharge of the duty of their respective offices. [Sec. 47, Chap. 87, Acts 1917.]

671. Ten Per Cent Penalty for Failure to Pay Taxes.—If any person shall fail or refuse to pay the taxes imposed upon him or his property by this Act until after the 31st day of January next succeeding the return of the assessment roll for said district, a penalty of ten (10%) per cent on the entire amount of such tax shall accrue, which penalty, when collected, shall be paid over to such district. Such delinquent taxes shall bear interest from August 1st after due at the rate of six per cent per annum. And the collector of taxes shall, by virtue of his tax roll, seize and levy upon and sell so much personal property as shall be sufficient to make the amount of such taxes, together with the penalty above provided interest thereon at the rate of six (6%) per cent per annum and all costs accruing thereon. If no personal property be found for seizure and sale as above provided, the collector shall make up and file with the secretary of the district the delinquent tax list hereinbefore provided for, charging against same all taxes, penalties and interest assessed against same and the owner thereof. [Sec. 48, Chap. 87, Acts 1917.]

672. How Owner May Redeem Property Returned Delinquent.—Any delinquent taxpayer whose lands have been returned delinquent, or any one having an interest therein, may redeem the same at any time before his lands are sold under the provisions of this Act by paying to the collector the taxes due thereon with interest at the rate of six (6%) per cent and all costs and the penalty of ten (10%) per cent as provided in this Act. [Sec. 49, Chap. 87, Acts 1917.]

673. Water Improvement Bonds; Tax to Pay Interest on.—Whenever such bonds shall have been voted, the directors for such district shall levy a tax upon all property within such district sufficient in amount to pay the interest on such bonds, together with an additional amount to be placed in the sinking fund, sufficient to discharge and redeem said bonds at their maturity, and said directors for such district shall annually levy or cause to be assessed and collected taxes upon all property within said district sufficient in amount to pay for the expenses for assessing and collecting such taxes. Whenever contract shall be made with the United States, taxes shall similarly be levied sufficient in amount to meet all installments, as they become payable, and interest, if any, and the directors shall cause due levy annually to be made until all such contracts and obligations shall have been discharged. Such bonds may be issued in serial form, or payable in installments, as determined by said directors, and such tax levy shall be sufficient if it provides an amount sufficient to pay the interest on such bonds and to meet the proportional amount of the principal of the next maturing series of said bonds, and the expenses of assessing and collecting such taxes for such year. [Sec. 68, Chap. 87, Acts 1917.]

674. Depository to Be Selected for Water Improvement Districts.—The directors for such district shall select a depository for such district under the same provisions as are now provided for the selection of depositories for the counties in this State; and the duties of such depositories shall be the same as now prescribed by law for the county depositories. However, in the selection of depositories the directors of such district shall act in the same capacity and perform the same duties as is incumbent upon the county judge and members of the commissioners' court in the selection of county depositories; and all laws now in force or hereafter to be enacted for the government of county depositories shall apply to and become a part of this Act. [Sec. 100, Chap. 87, Acts 1917.]

675. Duty of Depository to Make Certain Reports.—The district depository shall make a report of all moneys received, and of all moneys paid out, at the end of each month, and file such re-

ports with such vouchers among the records of said district in its own vault, and shall furnish a true copy thereof to the directors, and shall, when called upon, allow same to be inspected by any taxpayer or resident of such district. Such records shall be preserved as the property of such district and shall be delivered to the successor of such depository. [Sec. 101, Chap. 87, Acts 1917.]

676. Duty of Water Improvement District Directors to Maintain Office.—The directors of each district shall have and maintain a regular office suitable for conducting the affairs of such district, within such district or within a town situated within the general boundary lines of such district, and not removed therefrom. And such directors shall hold regular meetings at said office on the first Monday in February, May, August and November of each year, at 10 o'clock a. m., and shall hold such other regular special meetings as they may see fit. And any such resident taxpayer or interested party may attend any such meeting of such directors, but shall not participate in any such meetings without the consent of the directors and shall have no authority to vote upon any matter considered by such directors, but may present such matters as they desire to such directors in an orderly manner. [Sec. 102, Chap. 87, Acts 1917.]

677. Duty of Directors as to Bonds Previously Issued, Etc.—Where a district organized under prior Acts has issued bonds and levied taxes to provide the interest and sinking fund thereon and said bonds or a portion thereof have not been sold at such time, the directors of such district may return all unearned portion of said taxes, if collected, and may cancel, all unearned portion of said taxes not collected and all penalty, interest and costs thereon. At the time of the sale of such bonds, however, a sufficient tax shall be levied to provide all interest and charges thereon. [Sec. 105, Chap. 87, Acts 1917.]

678. Certain Laws Repealed; Districts Heretofore Established Validated.—The Act of the Twenty-ninth Legislature, being Chapter 50 of the Acts of 1905, and the Act of the Thirty-third Legislature, being Chapter 172 of the Acts of 1913, and Chapter 138 of the Acts of 1915, are hereby repealed. All districts heretofore organized under the terms and in accordance with the provisions of said Acts, are hereby expressly declared to be validly created, organized, described and defined with boundaries as prescribed by the order of the commissioners' court organizing the same, or as the same have since been changed by the board of directors thereof in the manner provided by said Acts. Such districts, however, shall hereafter be governed by the provisions of this Act, provided,

however, that the duly constituted and qualified officers of such districts shall continue to perform the duties of such offices until the next general election held under the provision of this Act.

All bonds issued by such district, which have been declared valid by a judgment of the district court, shall be and be held to be valid and binding obligations of such district and not subject to attack, except for actual fraud. Any such district may change its name to the name herein provided for such districts by filing a declaration to that effect with the commissioners' court of the county or counties in which it is situated, and which said declaration shall be in the form of a deed of conveyance and duly acknowledged by the president and secretary of the district, and shall embody and set forth a copy of the minutes of said board of directors, and show the resolution adopted for the change of such name, and when such instrument shall have been so recorded, the name of such district shall thereby be changed.

All districts in the process of organization under existing laws repealed by this Act, are hereby declared to be valid districts and entitled to proceed in accordance with the provisions of said Act so repealed until the date upon which this Act shall take effect after which, said districts shall be governed by the provisions of this Act, and said districts shall change their name to conform to the provisions of this Act by filing a declaration as above provided, in the office of the county clerk of the county or counties in which they are situated; and if they have not proceeded to the point of election of directors, they shall change such name by making application to the county commissioners' court having jurisdiction thereof, which said court shall change said name upon all orders thereafter issued relating to said district. [Sec. 107, Chap. 87, Acts 1917.]

679. Lands Relieved from Taxation, When.—Whenever any district organized or hereafter organized has failed or neglected to furnish water sufficient to irrigate any land within such district within two years from its organization, then such lands shall be relieved of any and all assessments and charges except taxes until such district shall construct the necessary canals and furnish the necessary water to enable the owner of said land to irrigate all of said land on demand therefor. [Sec. 111, Chap. 87, Acts 1917.]

680. Taxes to remain in Force from Year to Year, Etc.—The tax as levied in connection with the original issuance of bonds shall remain in force from year to year as the levy for that purpose, until a new levy shall be made. The board of directors may, from time to time, increase or diminish such tax so as to adjust

the same to the taxable values of the property subject to taxation by the district and the amount to be collected, and in such manner as to raise an amount sufficient to pay the annual interest and sinking fund on said bonds then outstanding. [Sec. 112, Chap. 87, Acts 1917.]

681. Tax for Interest, Sinking Fund and Expenses in Drainage Districts; Refundment to Construction and Maintenance Fund; Investment of Sinking Fund; Powers of Assessor and Collector; Equalization; Lien, Etc.—Whenever any such district drainage bonds shall have been voted, the commissioners' court shall levy and cause to be assessed and collected taxes upon all property within said drainage district, whether real, personal, mixed or otherwise, and sufficient in amount annually to pay the interest on such bonds as it shall fall due, together with an additional amount to be annually placed in a sinking fund sufficient to discharge and redeem said bonds at their maturity; and the commissioners' court shall annually levy and cause to be assessed and collected taxes upon all property within said district, whether personal, mixed or otherwise, sufficient in amount to pay for the expenses of assessing and collecting such taxes from year to year until said bonds, together with all interest thereon, are fully paid and discharged. Provided, that in any district heretofore established, and that issued bonds under this Act and in which taxes have been for any year levied, assessed and collected for the purpose of paying the expenses of assessing and collecting taxes with which to pay the interest and provide a sinking fund to redeem the bonds of such district, and the amount so collected has been placed to the credit of the interest and sinking fund of such district, and such expenses have been paid out of the maintenance and construction fund of said district, the commissioners' court of said county shall cause the said amount so collected to pay expenses of assessing and collecting said interest and sinking fund, as aforesaid, to be refunded to said "Construction and Maintenance Fund," and shall cause the county treasurer of said county to make proper transfer of said amount in the accounts of said district. If advisable, the sinking fund shall, from time to time, be (in)vested in such county, municipal, district or other bonds as shall be approved by the Attorney General of the State for the benefit of such drainage district. Provided, that in the assessment and collection of the taxes authorized by this Act, and in all matters pertaining thereto or connected therewith, said assessor and collector shall have the same powers and shall be governed by the same rules, regulations and proceedings as are provided by the laws of

this State for the assessment and collection of taxes for State and county purposes, unless otherwise provided for in this Act. And the commissioners' court of said county shall constitute a board of equalization for such drainage district, and all laws governing boards of equalization for county and State taxation shall govern such board for drainage districts.

The taxes levied or authorized to be levied by this Act, shall be a lien upon the property for which said taxes are assessed, and it shall be the duty of the commissioners' court, and the said court shall have authority to fix and determine when said taxes shall mature, and upon the failure to pay said taxes when due the penalty provided by the laws of Texas for the failure to pay State and county taxes at maturity shall in every respect apply to taxes herein authorized to be assessed and levied. [Acts 1911, p. 245, Sec. 31, superseding Art. 2603, R. S. 1911.]

The doctrine that special assessment for local improvements cannot be made without regard to special benefits or in excess of such benefits, or without providing a hearing as to question of benefits, has no application to a general ad valorem tax on all property of a drainage district created and organized for the purpose of public improvements. *Wharton County Drainage Dist. No. 1 v. Higbee* (Civ. App.), 149 S. W. 381.

682. Additional Tax Books; Assessment on Property in Drainage District; Penalty; Forfeiture.—The county commissioners' court (shall) provide all necessary additional books for the uses of the assessor and collector of taxes and the county clerk of such drainage district, and charge the cost of same to the said drainage district. It shall be the duty of the county tax assessor, when ordered to do so by the county commissioners' court, to assess all property within such drainage districts, and list the same for taxation in the books or rolls furnished him by said commissioners' court for that purpose, and return said books or rolls at the same time when he returns the other books or rolls of the State and county taxes for correction and approval; and if the said commissioners' court shall find said books or rolls correct, they shall approve the same and order the county clerk to issue a warrant against the county treasurer in favor of said tax assessor to be paid from the funds of said drainage district. The tax assessor shall receive for said services such compensation as the said county commissioners' court shall deem proper to compensate him for the amount of work done. Should the tax assessor fail or refuse to comply with the order of the commissioners' court requiring him to assess and list for taxation all the property in such drainage districts as herein provided, he shall be suspended from the further

discharge of his duties by the commissioners' court of his county, and he shall be removed from office in the mode prescribed by the law for the removal of any county officers. [Acts 1911, p. 245, Sec. 32, superseding Art. 2604, R. S. 1911.]

The fact that such statute does not specifically provide for the equalization of tax assessments does not affect the validity of a tax levied in a drainage district, since not only does such statute contemplate that the valuation fixed upon property by the board of equalization as the regular assessment shall fix its value for the drainage tax, but Acts Thirty-second Legislature, c. 118, par. 31, provides for the equalization of tax assessments and affords full protection to the taxpayer. *Wharton County Drainage Dist. No. 1 v. Higbee* (Civ. App.), 149 S. W. 381.

683. Collector Charged with Assessment Rolls in Drainage Districts; Compensation; Bond Required; Penalty for Failure to Give.—The tax collector of the county shall be charged by the county commissioners' court with the assessment rolls of the drainage district, and he shall be allowed such compensation for the collection of said taxes as he is now allowed for the collection of other taxes. The county commissioners' court shall require the tax collector of the county to give an additional bond or security in such a sum as they may deem proper and safe to secure the collection of said taxes; and should any collector of taxes fail or refuse to give such additional bond or security as herein provided, when requested by the commissioners court within the time provided by law for such purposes, he shall be suspended from office by the commissioners' court of his county, and immediately thereafter be removed from office in the mode prescribed by law. [Acts 1911, p. 245, Sec. 33, superseding Art. 2605, R. S. 1911.]

684. Duty of Drainage District Collector to Report Delinquents to Commissioners' Court; Duty of Court.—It shall be the duty of the tax collector to make a certified list of all delinquent property upon which the drainage tax has not been paid and return the same to the county commissioners' court, which shall proceed to have the same collected by the sale of such delinquent property in the same manner as is now provided for the sale of property for the collection of State and county taxes, and at the sale of any property for any delinquent drainage tax the drainage commissioners may become the purchasers of the same for the benefit of the drainage district. [Acts 1911, p. 245, Sec. 34, superseding Art. 2606, R. S. 1911.]

685. Separate Tax Assessor and Board of Equalization in Drainage Districts; Election; Appointment; Powers and Duties.—After any drainage district shall have been created and established, as

in this Act provided, the commissioners' court of the county in which such district is established may, upon petition of twenty-five resident freeholders of such drainage district, order an election to be held within the boundaries of such district, giving notice thereof as provided for other elections under the provisions of this Act, to determine whether or not such district shall have a separate tax assessor, separate tax collector and separate board of equalization for the assessment and collection of taxes for district purposes; and if at said election two-thirds of the property taxpayers of such district participating in such election, shall vote in favor of such change, then the commissioners' court of the county shall vote in favor of such suitable person as tax assessor of such district, and a suitable person for tax collector of such district, each of whom shall give bond as otherwise provided for such officers and shall exercise all the powers and duties conferred upon county tax assessors and county tax collectors under the provisions of this Act, and the drainage commissioners of such district shall exercise all of the powers conferred upon the commissioners' court of the county by this Act, with relation to the equalization of taxes, and the general laws of this State, relating to the assessment, collection and equalization of taxes shall apply to the assessment, collection and equalization of taxes, for such drainage district, in so far as such general laws are applicable to such taxation. [Acts 1913, S. S., p. 89, Sec. 1, amending Acts 1911, p. 245.]

686. Levy of Annual Tax for Maintenance of Improvements; Limitation of Amount.—In all such improvement districts which have heretofore been created under any law of this State or that may hereafter be created, the commissioners' courts of the respective counties, or the commissioners of said districts where said districts have voted to take charge of the assessing, collecting and equalizing of taxes of said district, shall be and are hereby authorized to levy and cause to be assessed and collected for the maintenance and keep-up of the levees and improvement districts an annual tax not to exceed five cents on the one hundred dollars valuation upon all property within said improvement district, whether real, personal or mixed, and said tax shall be used for the purpose of maintenance, repairs and keep-ups of said levees and improvements within the district. [Acts 1913, S. S., p. 89, Sec. 1.]

As to causeways across arms of Gulf of Mexico, see Chapter 9a, Vernon Sayle's Texas Civil Statutes, 1914.

687. Compensation of Drainage Trustee; of County Assessor and Collector; Provision for.—The trustee and treasurer named in this

Act shall receive only one compensation for services in both capacities; he shall be allowed one per cent upon all moneys received by him for the account of such drainage district, and one per cent upon all moneys paid out as provided in this Act; but he shall not be entitled to such commission on money in his hands as treasurer of said drainage district at the time of the dissolution thereof, as of money coming into his hands, nor on money turned over by him at the expiration of his trusteeship. And the county assessor and the county collector of taxes shall receive the same compensation for the assessing and collecting of taxes under this Act as is now provided by Chapter 118, Acts of the Legislature of 1911 (Art. 2605), and their compensation for such service shall be provided for in the order of the commissioners' court assessing such taxes. [Acts 1913, S. S., p. 41, Sec. 16.]

CHAPTER XXIV.

TAXES FOR WHICH INSURANCE COMPANIES ARE LIABLE.

(From R. S. 1911 and Recent Acts of Legislature.)

	Sec.		Sec.
Insurance Companies Required to Render Property for Taxes..	688	Before Forming Association Must Pay All Taxes.....	701
On Whom Process Shall Be Served in Suits Against Insurance Companies	689	Certain Insurance Companies to Pay on Gross Receipts—Sworn Statement Required	702
Certain Insurance Companies to Deposit Securities With State Treasurer	690	Insurance Commissioner Shall Certify Facts to State Treasurer	703
Each Life Insurance Company Required to Make Report.....	691	Gross Receipts Tax—How Regulated	704
Insurance Commissioner to Certify Amount of Tax Due from Each Company	692	Shall Constitute All Taxes Due....	705
No Occupation Tax on Insurance Companies Other Than Imposed Herein	693	Application to Accompany Each Insurance Policy	706
Certificate Accepted Subject to Laws in Force.....	694	How Insurance Companies May Be Incorporated	707
Insurance Companies Withdrawing, How Re-admitted to State	695	Salaries and Expenses of Industrial Accident Board to Be Paid by State.....	708
Failure to Renew Certificate of Authority, May Still Maintain Agent	696	Mutual Insurance Companies—How Incorporated	709
May Loan Money on Complying With Laws Relating to Loan Companies	697	Fees to Be Paid to Commissioner of Insurance and Banking..	710
Value of Insurance Company Property, How Arrived at.....	698	Annual Occupation Tax on Each Company	711
Licensed Agents to Report—Shall Keep Record	699	How "Doing Business" is Defined by Law.....	712
Gross Receipts Tax on Fire Insurance Companies	700	Occupation Tax to Be Paid by Certain Persons, etc.....	713
		Tax on Persons Acting as General Adjusters, etc.....	714
		Fraternal Benefit Societies Exempt from Certain Taxes.....	715

688. Insurance Companies Required to Render Property for Taxation.—Insurance companies incorporated under the laws of this State shall hereafter be required to render for State, county and municipal taxation all of their real estate as other real estate is rendered, and all of the personal property of such insurance companies shall be valued as other property is valued for assessment in this State in the following manner: From the total valuation of its assets shall be deducted the reserve, being the amount of the debts of insurance companies by reason of their outstanding policies in gross, and from the remainder shall be deducted the assessed value of all real estate owned by the company and the remainder

shall be the assessed taxable value of its personal property. Home insurance companies shall not be required to pay any occupation or gross receipt tax. [R. S., Art. 4764.]

NOTE.—A life insurance company in rendering its personal assets for taxation in making the deduction on account of its real estate, is permitted to deduct the "assessed" valuation of such real estate, and not an *appraised* value, which might be different in amount from the assessed valuation. Opinion of Attorney General, June 15, 1912.

689. On Whom Process Shall Be Served in Suits Against Insurance Companies.—Process in any civil suit against any domestic life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, may be served only on the president, or any active vice-president or secretary or general counsel residing at the city of the home office of the company, or by leaving a copy of same at the home office of such company during business hours. [R. S., Art. 4745.]

690. Certain Insurance Companies to Deposit Securities with State Treasurer, Etc.—Any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, organized under the laws of this State, may at its option deposit with the Treasurer of this State securities equal to amount of its capital stock, and may at its option withdraw the same, or any part thereof, first having deposited in the treasury in lieu thereof other securities equal in value to those withdrawn. Any such securities, before being so originally deposited or substituted, shall be approved by the Commissioner of Insurance and Banking, and when any such deposit is made the Treasurer shall execute to the company making the deposit a receipt therefor, giving such description to such securities as will identify the same, and such company shall have the right to advertise such fact or print a copy of the Treasurer's receipt on the policies it may issue, and the proper officers or agents of each insurance company making such deposit shall be permitted at all reasonable times to examine such securities and to detach coupons therefrom and to collect interest thereon under such reasonable rules and regulations as may be prescribed by the Treasurer and the Commissioner of Insurance and Banking of this State. The deposit herein provided for, when made by any company, shall thereafter be maintained as long as said company shall have outstanding any liability to its policyholders. For the purpose of State, county and municipal taxation the situs of all personal property

belonging to such companies shall be at the home office of such company. [R. S. Art. 4749.]

A life insurance company in making the deposit above authorized may execute a conveyance in trust of its home office building to the State Treasurer, and after approval by the Commissioner of Insurance and Banking, may deposit such conveyance in trust with the State Treasurer. The conveyance should be recorded in the county where the building is situated, and should be properly authorized by resolution of the company's board of directors, or by a duly appointed and authorized finance committee acting for the company. (Opinion of Attorney General, January 6, 1912.)

A life insurance company may deposit and the Commissioner of Insurance and Banking may approve for deposit securities worth more than the capital stock of the company, and such securities may be appraised at their market value at the time of the deposit, and not merely to the amount of the capital stock. As a part of such deposit, the company may convey in trust to the State Treasurer its home office lot and building, which may be appraised and approved by the Commissioner of Insurance and Banking at its market value at the time of the deposit. Such approval as to valuation may be changed at any time by the Commissioner, and the amount of the deposit thereby increased or reduced whenever any change in the market value of the property occurs. Opinion of Attorney General, January 30, 1912.

Under Section 8, Chap. 170 of the Acts of the Thirtieth Legislature, and Art. 8, Sec. 11 of the Constitution, securities of an insurance corporation deposited with the State Treasurer, thereby giving the company a better financial standing, have their situs in the capital city and are taxable there, though the company does no business in that place. *Guarantee Life Ins. Co. of Houston v. City of Austin*, 190 S. W. 189 (Sup. Ct.)

691. Each Life Insurance Company Required to Make Report.—

Each life insurance company not organized under the laws of this State transacting business in this State shall on or before the first day of March make a report to the Commissioner of Insurance and Banking of this State, which report shall be sworn to by either the president or vice-president and secretary or treasurer of such company, and which shall show the gross amount of premiums collected during the year ending on December 31st preceding, from citizens of this State upon policies of insurance, and each such company shall pay annually an occupation tax equal to 3 per cent of such gross premium receipts; provided, that when the report of the investment in Texas securities, as defined by law, of any such companies as of December 31st of any year, shall show that it has invested on said date as much as 30 per cent of its total Texas reserves, as defined by law, in promissory notes or other obligations secured by mortgage, deed of trust or other lien on Texas real estate, the rate of occupation tax shall be reduced to 2.6 per cent; and when such report shall show that such company has so invested

on said date as much as 60 per cent of its total reserve, the rate of such occupation tax shall be reduced to 2.3 per cent; and when such a report shall show that such company has so invested, on said date, as much as 75 per cent of its total Texas reserve, the rate of such occupation tax shall be reduced to 2 per cent; provided, that all such companies shall in any event make the investments in Texas securities in proportion to the amount of Texas reserves as required by law. Such occupation taxes shall be for and on account of the business transacted within this State during the calendar year in which such premiums were collected or for that portion thereof during which the company shall have transacted business in this State while this Act was in force and effect. [R. S., Art. 4779.]

Reserves on life insurance policies represent what the company issuing the policies must at all times have on hand to meet its liabilities on its policies. In determining the percentage of total Texas reserves which must be invested in Texas real estate securities to secure a reduction of taxes, no deduction should be made from amount of legal reserve on Texas policies on account of Texas policy loans. Opinion of Attorney General, May 1, 1914.

A life insurance company doing business under the assessment or natural premium plan is required to pay occupation taxes, as required by above Section 691. Opinion of Attorney General, June 27, 1914.

692. Insurance Commissioner to Certify Amount of Tax Due from Each Company.—Upon the receipt of sworn statements showing the gross premium receipts of such company the Commissioner of Insurance and Banking of this State shall certify to the Treasurer of this State the amount of taxes due by such company for the preceding year; which taxes shall be paid to the State Treasurer for the use of the State by such company. Upon his receipt of such certificate and the payment of such tax, the Treasurer shall execute a receipt therefor, which receipt shall be evidence of the payment of such taxes and no such life insurance company shall receive a certificate of authority to do business in this State until such taxes are paid. If upon the examination of any company, or in any other manner, the Commissioner of Insurance and Banking shall be informed that the gross premium receipts of any year exceed in amount those shown by the report thereof theretofore made as above provided, it shall be the duty of such Commissioner to file with the State Treasurer a supplemental certificate showing the additional amount of taxes due by such company, which shall be paid by such company upon notice thereof. It shall be the duty of the State Treasurer of this State, if within fifteen days after the

receipt by him of any certificate or supplemental certificate provided for by this section the taxes due as shown thereby have not been paid, to report the facts to the Attorney General, who shall immediately institute suit in the proper court of Travis county to recover such taxes. [R. S., Art. 4780.]

693. No Occupation Tax on Insurance Companies Other Than Imposed Herein.—No occupation tax other than herein imposed shall be levied by the State or any county, city or town upon any life insurance company herein subject to the occupation tax in proportion to its gross premium receipts or its agents. The occupation tax imposed by this Act upon life insurance companies shall be the sole occupation tax which any company doing business in this State under the provisions of this chapter shall be required to pay. [R. S., Art. 4781.]

694. Certificate Accepted Subject to Laws in Force.—Each life insurance company not organized under the laws of this State hereafter granted a certificate of authority to transact business in this State shall be deemed to have accepted such certificate and to transact such business thereunder subject to the conditions and requirements that after it shall cease to transact new business in this State under a certificate of authority and so long as it shall continue to collect renewal premiums from citizens of this State it shall be subject to the payment of the same occupation tax in proportion to its gross premiums during any year from citizens of this State as is or may be imposed by law on such companies transacting new business within this State under certificates of authority during such year; provided, that the rate of such tax to be so paid by any such company shall never exceed the rate imposed by this Act upon insurance companies transacting business in this State, and each such company shall make the same reports of its gross premium receipts for each such year and within the same period as is or may be required of such companies holding certificates of authority; and shall at all times be subject to examination by the Commissioner of Insurance and Banking or some one selected by him for that purpose, in the same way and to the same extent as is or may be required of companies transacting new business under certificates of authority in this State, the expenses of such examination to be paid by the company examined; and the respective duties of the Commissioner of Insurance and Banking in certifying the amount of such taxes and of the State Treasurer and Attorney General in their collection shall be the same as are or may be prescribed respecting taxes due from companies authorized to transact new business within this State. [R. S., Art. 4782.]

695. Insurance Companies Withdrawing, How Re-Admitted to State.—Any life insurance company which has heretofore been, may now be, or may hereafter be engaged in writing policies of insurance upon the lives of citizens of this State which has heretofore ceased or may hereafter cease writing such policies and which does not now or may not hereafter have a certificate of authority to transact the business of life insurance in this State but which has continued or may continue to collect renewal or other premiums upon such policies shall, before it may obtain a certificate of authority to transact the business of life insurance in this State, report under oath to the Commissioner of Insurance and Banking of this State, the gross amount of premiums so collected from citizens of this State upon policies of insurance during each calendar year since the end of the period covered by the last preceding report by such company of gross premium receipts upon which it paid an occupation tax, and shall pay to the State a sum equal to the percentage of its gross premium receipts for each such year that was required by law to be paid as occupation taxes by companies doing business in this State during such year or years and upon the payment of such sum and securing a certificate of authority to do business in this State the penalties provided for the failure to pay such taxes and make such reports in the past shall be remitted. [R. S., Art. 4783.]

696. Failure to Renew Certificate of Authority, May Still Maintain Agent.—Any company which shall fail to renew its certificate of authority or continue to write new business in this State shall, nevertheless, have the right to maintain an agent or agents in Texas for the purpose of collecting renewal premiums on outstanding business written by it under certificate of authority, and also for the purpose of making investments as provided by this Act. [R. S., Art. 4784.]

697. May Loan Money on Complying with Law Relating to Loan Companies.—That any life insurance company not desiring to engage in the business of writing life insurance in this State, but desiring to loan its funds in this State, may obtain a permit to do so by complying with the laws of this State relating to foreign corporations engaged in loaning money in this State without being required to secure a certificate of authority to write life insurance in this State. [R. S., Art. 4790.]

698. Value of Insurance Company Property, How Arrived at.—For the purpose of State, county and city taxation the amount of the reserve and contingency reserve of all cooperative life insurance companies shall be treated as debts due by them to their policy-

holders, and the total value of their property for such purposes shall be ascertained by deducting from the total amount of their gross assets the amount of such reserves and contingency reserves. [R. S., Art. 4825.]

699. Licensed Agents to Report; Shall Keep Record.—Every agent so licensed shall report, under oath, to the Commissioner of Insurance and Banking within thirty days from the first day of January and July of each year the amount of gross premiums received by him for such excess insurance, and shall pay the said Commissioner a tax of 5 per cent thereon. The agent procuring a license as provided in this Act shall keep a separate record of all transactions herein provided open at all times to the inspection of the Commissioner or his legally appointed representative. In default of the payment of any sums which may be due the State under this Act, the said Commissioner may sue for the same in any court of record in this State. [R. S., Art. 4875.]

700. Gross Receipts Tax on Fire Insurance Companies.—There shall be assessed and collected by the State of Texas an additional one and one-quarter ($1\frac{1}{4}$) per cent of the gross premiums on all fire insurance companies doing business in this State, according to the reports made to the Commissioner of Insurance and Banking as required by law; and said taxes when collected shall be placed in a separate fund with the State Treasurer to be expended during the current year in carrying out the provisions of this Act; and should said amount collected be more than necessary to pay all expenses, the State Fire Insurance Commission may reduce the rate for the next succeeding year, so that no more money will be collected than is necessary to pay all necessary expenses of maintaining the Commission, which funds shall be paid out on requisitions made out and filed by the Commissioner when the Comptroller shall issue warrants therefor. [Acts 33d Leg., Chap. 106, Sec. 29.]

The tax on gross premiums of fire insurance companies required to be collected for the support of the State Fire Insurance Commission must be levied and collected on the premiums on fire insurance only and cannot be levied on any other class of insurance. Opinion of Attorney General, February 25, 1914.

Insurance companies insuring automobiles against fire must pay the tax for the support of the State Fire Insurance Commission. Opinion of Attorney General, March 14, 1915.

701. Before Forming Association Must Pay All Taxes.—In the event that any number of insurance companies, whether life, health, fire, marine or inland, should associate themselves together for the purpose of issuing or vending policies or joint policies of insurance,

such association shall not be permitted to do business in this State until the taxes and fees due from each of said companies shall have been paid and all the conditions of the law fully complied with by each company; and any company failing or refusing to pay such taxes and fees, and to fully comply with the requirements of law, shall be refused permission by the Commissioner of Insurance to do business in this State. [R. S., Art. 4945.]

702. Certain Insurance Companies to Pay on Gross Receipts; Sworn Statement Required.—Every insurance company transacting the business of fire, marine, marine inland, accident, credit, title, live stock, fidelity, guaranty, surety, casualty or any other kind or character of insurance business other than the business of life insurance, within this State, and other than Fraternal benefit associations, at the time of filing its annual statement, shall report to the Commissioner of Insurance and Banking the gross amount of premiums received in the State upon property, and from persons residing in this State during the preceding year, and each of such companies shall pay an annual tax upon such gross premium receipts as follows: Shall pay a tax of two and six-tenths per cent, provided, that any company doing two or more kinds of insurance business herein referred to, shall pay the tax herein levied upon its gross premiums received from each of said kinds of business; and the gross premiums receipts where referred to in this Act are understood to be the premium receipts reported to the Commissioner of Insurance and Banking by the insurance companies upon the sworn statement of two principal officers of such companies, less return premiums paid policyholders, and to the premiums paid for reinsurance in companies authorized to do business in this State. [Acts 32d Leg., Chap. 108, Sec. 1.]

Casualty companies, home companies organized in Texas, are not exempt from payment of the taxes on their gross premium receipts. Opinion of Attorney General, January 18, 1915.

703. Insurance Commissioner Shall Certify Facts to State Treasurer.—Upon receipt by him of sworn statements, showing the gross premium receipts by such companies, the Commissioner shall certify to the State Treasurer the amount of taxes due [by] each company, which tax shall be paid to the State Treasurer for the use of the State on or before the first of March following, and the receipt of the Treasurer shall be evidence of the payment of such taxes. No such insurance company shall receive a permit to do business in this State until such taxes are paid. [Acts 32d Leg., Chap. 108, Sec. 1.]

704. Gross Receipt Tax; How Regulated.—If any such insurance company shall have as much as one-fourth of its entire assets, as shown by said sworn statement, invested in any or all of the following securities: Real estate in the State of Texas, bonds of this State or of any county, incorporated city or town of this State, or other property in this State in which by law such companies may invest their funds, then the annual tax of any such companies shall be one per cent of its said gross premium receipts; and if any such company shall invest as aforesaid as much as one-half of its assets, then the annual tax of such company shall be one-half of one per cent of its gross premium receipts, as above defined; and provided, further, that no occupation tax shall be levied on insurance companies herein subjected to a gross premium receipt tax by any county, city or town; provided, also, that all mutual fraternal benevolent associations, now or hereafter doing business in this State under the lodge-system and on the assessment plan, whether organized under the laws of this State or a foreign state or country, are exempt from the provisions of this section. [Acts 32d Leg., Chap. 108, Sec. 1.]

705. Shall Constitute All Taxes Due.—The tax aforesaid shall constitute all taxes and license fees collectible under the laws of this State against any such insurance companies, and no other occupation or other taxes shall be levied on or collected from any insurance company by any county, city or town, but this Act shall not be construed to prohibit the levy and collection of State, county and municipal taxes upon the real and personal property of such companies; provided, that purely cooperative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own property, and not for profits, shall be exempt from the provisions of this bill; provided, that in addition to the tax above prescribed, each company doing business herein referred to and affected by the provisions of the Act of the Fourth Called Session of the Thirty-first Legislature, approved September 6, 1910, and published as Chapter 8, General Laws of said session, shall pay its pro rata share of the charge or cost of maintaining the State Insurance Board as provided by Section 28 of this Act, approved September 6, 1910, and published as Chapter 8 of the General Laws of the Fourth Called Session of the Thirty-first Legislature; and provided further, that portion of Section 28 of the State Insurance Board Law which reads as follows: "Provided that the collections from insurance companies provided for in this section shall not be made for any year during which any such company shall be liable under the laws of this State to the payment of an occupa-

tion tax at a rate of two and one-half per cent or more of the gross premiums canceled policies, be and the same is hereby repealed." [Acts 32d Leg., Chap. 108, Sec. 1.]

A surety company, making bonds required by the United States government under a license granted under an Act of Congress, does not thereby become a Federal agency, and the premiums collected on such bonds are not exempt from taxation. Opinion of Attorney General, March 1, 1910.

A company, licensed to do a life insurance business and an accident insurance business, and which withdraws from the State as to its life business, is not required to pay taxes on premiums on renewals on its life business in order to obtain a license to continue its accident business. Opinion of Attorney General, September 29, 1910.

706. Application to Accompany Each Insurance Policy.—Every contract or policy of insurance issued or contracted for in this State shall be accompanied by a written, photographic or printed copy of the application for such insurance policy or contract, as well as a copy of all questions asked and answers given thereto. The provisions of the foregoing articles shall not apply to policies of life insurance in which there is a clause making such policy indisputable after two years or less, provided premiums are duly paid; provided further, that no defense based upon misrepresentations made in the application for or in obtaining or securing any contract of insurance upon the life of any person being or residing in this State shall be valid or enforceable in any suit brought upon such contract two years or more after the date of its issuance when premiums due on such contract for the said term of two years have been paid to and received by the company issuing such contract without notice to the assured by the company so issuing such contract of its intention to rescind the same on account of misrepresentations so made, unless it shall be shown on the trial that such misrepresentation was material to the risk and intentionally made. [R. S. Art. 4951.]

707. How Insurance Companies May Be Incorporated.—Corporations may be incorporated under the laws of this State to transact any one or more kinds of insurance business other than life, fire, marine, inland, lightning or tornado insurance business in the same manner and by complying with the same requirements as prescribed by law for the incorporation of life insurance companies; provided, that no such company shall be incorporated having the power to do a fidelity and surety business or a liability insurance business with a paid-up capital stock of less than \$200,000.00. [R. S. Art. 4956.]

708. Salaries and Expenses of Industrial Accident Board to Be Paid by State.—The salaries and expenses of the Industrial Accident Board shall be paid by the State. The salary of the chairman shall be three thousand dollars a year, and the salaries of the other members of the board shall be two thousand and five hundred dollars a year each. The board may appoint a secretary at a salary of not more than two thousand dollars a year and may remove him at any time, furnishing him upon demand with a statement of the cause of his removal. It shall also be allowed an annual sum not exceeding five thousand a year for clerical services, traveling and other necessary expenses. The board shall be provided suitable offices in the capitol or some other convenient building in the city of Austin, where its records shall be kept. [Id., Sec. 3, Part II.]

709. Mutual Insurance Companies, How Incorporated.—When any number of persons, not less than seven, desire to organize a mutual insurance company, as herein provided, they shall make application to the Commissioner of Insurance and Banking of the State of Texas for permission to solicit insurance on the mutual plan. Such application shall contain:—

(1) The name of the company, and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public.

(2) The locality of the principal business office of such company.

(3) The kind of insurance business the company proposes to engage in.

(4) The name and place of residence of not less than seven persons making such application for such permit.

(5) An affidavit of at least one of said applicants, stating the places of residence and names of such applicants correctly.

Upon receipt of such application, together with a fee of one dollar, in payment for filing such application, the Commissioner of Insurance and Banking shall at once file said application, and issue to said applicant a permit authorizing said applicant to solicit insurance on the mutual plan, in accordance with the terms of the application, but not to issue policies of insurance. [Sec. 2, Chap. 29, 33d. Leg.]

710. Fees to Be Paid to Commissioner of Insurance and Banking.—Every mutual company operating under this act shall pay to the Commissioner of Insurance and Banking of the State of Texas, for obtaining a charter, a fee of twenty dollars, and for each license granted or renewal thereof, a fee of one dollar, and for filing each annual statement, a fee of ten dollars annually on the 31st day of

each December, and when the Insurance Commissioner has certified to the Treasurer of the State of Texas, the correct amount to be paid, every mutual company operating under this act shall pay to the Treasurer of the State of Texas one-half of one per cent of all the net premiums, or assessments, received by it during the year, and no other tax shall be required of such mutual company or companies, their officers and agents, except such fees as shall be paid to the Commissioner of Insurance as required by law. [Id., Sec. 18.]

711. Annual Occupation Tax on Each Company.—All Companies organized, authorized, admitted and licensed under this act shall pay an annual occupation tax of fifty dollars on filing their annual statement, and a tax of two per cent on the cash collected as premiums, during the preceding year from policyholders residing in Texas, which shall be in lieu of all other taxes or fees; provided, this shall not exempt from the payment of charter or permit fees or ad valorem taxes. [Sec. 8, Chap. 72, General Laws 26th Leg.]

The above section (711) has probably been repealed by Section 2, Chapter 108, Acts Thirty-second Legislature.

712. How "Doing Business" Is Defined by Law.—Whenever any person shall do or perform within this State any of the acts mentioned in Article 4961, for or on behalf of any insurance company therein referred to, such company shall be held to be doing business in the State, and shall be subject to the same taxes, State, county and municipal, as insurance companies that have been legally qualified and admitted to do business in this State, by agents or otherwise, are subject; the same to be assessed and collected as taxes are assessed and collected against such companies, and such persons so doing or performing any of the acts or things shall be personally liable for such taxes. [R. S., Art. 4962.]

713. Occupation Tax to Be Paid by Certain Persons, Etc.—There shall be levied on and collected from every person, firm, company or association of persons pursuing any of the occupations named in the following numbered subdivisions of this article, an annual occupation tax, which shall be paid annually in advance, except when herein otherwise provided, on every such occupation or separate establishment, as follows: * * * [R. S., Art. 7355.]

714. Tax on Persons Acting as General Adjusters, Etc.—From each and every person acting as general adjuster of losses, or agents of life, fire, marine and accident insurance companies, who may transact any business as such in this State, an annual occupation

tax of fifty dollars. By "general agent," as used in this law, is meant any person or firm, representative or any insurance company in this State, or who may exercise a general supervision over the business of such insurance company in this State, or over the local agency thereof in this State, or any subdivision thereof; provided, that when such a general agent acts as a local agent he shall pay an additional tax as local agent, as hereinafter provided. [Sec. 20, R. S., Art. 7335.]

The occupation tax on local agents and all life insurance agents has been repealed.

The statute levies an occupation tax of \$50 against State or general agents of fire insurance companies and permits counties and cities to levy one-half that amount. Opinion of Attorney General, August 28, 1915.

715. Fraternal Benefit Societies Exempt from Certain Taxes.— Every fraternal benefit society organized or licensed under this act is hereby declared to be a charitable and benevolent institution, and all of its funds and property shall be exempt from all and every State, county, district, municipal and school tax, other than taxes on real estate and office equipment, when same is used for other than lodge purposes. [Id., Sec. 30.]

CHAPTER XXV.

TAXES ON FEED STUFFS AND MILL PRODUCTS.

(From Title 92, R. S.)

	Sec.		Sec.
Concentrated Feed Stuffs in Packages of Standard weight, to Be Marked, How.....	716	and Marks	721
Unground or Unbroken Grain or Seed Not Included in Definition	717	Duty of A. and M. Director to Secure Samples, How; Analysis; Publication	722
Statutory Definition of Concentrated Feed Stuffs	718	Statutory Definition of the Term "Importer"	723
Sample of Concentrated Feed Stuff to Be Deposited at A. and M. Experiment Station....	719	What Feed Stuffs Shall Be Deemed Adulterated	724
Each Package of Feed Stuffs to Have Tax Tag Affixed—Disposition of Funds Collected....	720	Duties and Powers of Director of Experiment Station to Adopt Standards, etc.....	725
Manufacturers and Importers Required to Furnish List of,		Disposition of Funds for Concentrated Commercial Feed Stuffs	726
		Funds to Be Used How—Board to Make Sworn Itemized Statement	727

716. Concentrated Feed Stuffs in Packages of Standard Weight, to Be Marked, How.—Every lot or parcel of concentrated feeding stuffs, as defined in Article 5896, used for feeding farm live stock, sold, offered, or exposed for sale in the State of Texas for use within this State, shall have printed on a tag described in Article 5898, a plainly printed statement clearly and truly certifying the number of net pounds of feeding stuff in the package, stating the name or names of material of which such weight is composed, where the contents are of a mixed nature, the name, brand, or trade mark under which the article is sold, the name and address of the manufacturer or importer, the place of manufacture, such information as is required by Article 5902, if any, and a chemical analysis stating the minimum percentages it contains of crude protein, allowing one per cent of nitrogen to equal six and one-fourth per cent of protein, of crude fat, of nitrogen-free extract, and the maximum percentage it contains of crude fiber; these constituents to be determined by the methods adopted at the time by the association of official agricultural chemists of the United States. Mill products hereinafter mentioned shall have the following standard weights, viz.: Flour, one hundred and ninety-six pounds per barrel, or forty-eight pounds per sack; corn meal, bolted or unbolted, thirty-five pounds per sack; rice bran, one hundred and forty-three pounds per sack; rice

polish, two hundred pounds per sack; and other feeds made from cereals of any kind, whether pure, mixed, or adulterated, one hundred pounds per sack. Fractional barrels and sacks shall weigh in the same proportion, and those weights shall be net and exclusive of the barrel or sack in which said product is packed. [Act 1905, p. 207; Amended Act 1907, p. 243, Sec. 1; R. S., Art. 5894.]

717. Unground or Unbroken Grain or Seed Not Included in Definition.—The term, “concentrated commercial feeding stuffs,” as herein used, shall not include hay or straw, the whole seed or grains of wheat, rye, barley, oats, Indian corn, rice, buckwheat, or broom corn, or any other whole or unground grains or seeds. [R. S., Art. 5895.]

718. Satutory Definition of Concentrated Feed Stuff.—The term, “concentrated feed stuffs,” as herein used, shall include wheat bran, wheat shorts, linseed meals, cotton seed meals, pea meals, cocoanut meals, gluten meals, gluten feeds, maize feeds, starch feeds, sugar feeds, dried brewer’s grains, malt sprouts, hominy feeds, cerealine feeds, rice meal, rice bean, rice polish, rice hulls, oat feeds, corn and oat chops, corn chops, ground beef, or mixed fish feeds, and all other materials of similar nature not included herein. [R. S., Art. 5896.]

Feed stuffs composed of whole grains of various kinds of seed do not come under the provisions of the law. Ruling of Attorney General, p. 825 1914-16.

Feed stuffs of whole grains containing cracked grain do not come within the meaning of the law unless they contain such a percentage of cracked or crushed grains as to require an analysis to determine their composition. Ruling of Attorney General, p. 825, 1914-16.

Cotton seed hulls are not a concentrated feed stuff, within the meaning of this law, and hence are not subject to the tax and other regulatory measures. Ruling of Attorney General, p. 825, 1914-16.

If a feed is composed of cotton seed hulls and any one or more of the materials mentioned in Section 3 of this Act, it would be a concentrated feed, as contemplated by the statute. Ruling of Attorney General, p. 825, 1914-16.

The whole grain, or a feed that is composed of one or more of the whole grains of the materials mentioned, does not come under the control of the Pure Feed Law. Ruling of Attorney General, p. 825, 1914-16.

719. Sample of Concentrated Feed Stuff to Be Deposited at A. & M. Experiment Station.—Before any concentrated feeding stuff, as defined in Article 5896 of this chapter, is so offered or exposed for sale, the importer, manufacturer and party who causes it to be sold, or offered for sale within the State of Texas for use within this State, shall, for each and every feed stuff bearing a distinguish-

ing name and trade mark, file with the Director of the Texas Agricultural and Experiment Station a certified copy of the statement named in Article 5894, and shall also deposit with said director a sealed glass jar or bottle containing not less than one pound of the feeding stuff to be sold, or offered for sale, accompanied by an affidavit that it is a fair average sample thereof, and corresponds within reasonable limits to the feeding stuff which it represents in the percentage of protein, fat and crude fiber, and nitrogen-free extract which it contains. This shall not be construed to apply to farmers who grind their own feed stuffs, and who do not adulterate same. [R. S., Art. 5897.]

720. Each Package of Feed Stuffs to Have Tax Tag Affixed; Disposition of Funds Collected.—The manufacturer, importer, agent or seller of each concentrated commercial feeding stuff as defined in Article 5896 of this chapter, shall, before the article is offered for sale, pay to the Director of the Texas Agricultural Experiment Station an inspection tax of ten cents per ton for each ton of such concentrated feeding stuff sold, or offered for sale, in the State of Texas for use within this State, and shall affix to each lot shipped in bulk, and to each bag, barrel or other package of such concentrated feeding stuffs, a tag to be furnished by said director, stating that all charges specified in said article have been paid. The Director of said Texas Agricultural Experiment Station is hereby empowered to prescribe the form of such tags and adopt such regulations as may be necessary for the enforcement of this law. Whenever the manufacturer or importer or shipper of a concentrated feeding stuff shall have filed a statement named in Article 5894 of this chapter, and have paid the inspection tax, no agent or seller of said manufacturer, inspector or shipper shall be required to file such statement or pay such tax. The amount of the inspection tax and penalties received by said director shall be paid into the State Treasury. So much of the inspection tax and penalties collected under this chapter shall be paid by the State Treasurer to the treasurer of the Texas Agricultural and Mechanical College as the director of the Texas Agricultural Experiment Station may show by his bills has been expended in performing the duties required by this chapter, but in no case to exceed the amount of the inspection tax and penalties received by the State Treasurer under this chapter. [R. S., Art. 5898.]

The inspection tax of twenty-five cents per ton paid to the State Chemist on commercial fertilizers sold or exposed or offered for sale is an annual license fee and the tags evidencing the payment of such license fee cannot

be used after the expiration of the fiscal year for which they were issued. Ruling of Attorney General, p. 722, 1914-16.

The State Chemist has no authority to redeem unused tags or to exchange same for tags of a fiscal year succeeding the year for which the same were issued. Ruling of Attorney General, p. 722, 1914-16.

721. Manufacturers and Importers Required to Furnish List of, and Marks.—All manufacturers and importers of concentrated commercial feeding stuffs, or dealers in same, shall, when requested, furnish the director of the Texas Experiment Station with a complete list of names or trade marks of such feeding stuffs. [R. S., Art. 5899.]

722. Duty of A. & M. Director to Secure Samples; How; Analysis; Publication.—The director of the Texas Agricultural Experiment Station shall cause one analysis or more to be made annually of each concentrated commercial feeding stuff sold or offered for sale under the provisions of this chapter. Said director is hereby authorized in person or by deputy to take a sample not exceeding two pounds in weight for analysis from any lot or package of concentrated commercial feeding stuff which may be in the possession of any manufacturer, importer, agent, dealer or buyer in this State; but said sample shall be drawn or taken in the presence of said party or parties in interest, or their representatives, and shall be taken from a parcel, lot or number of parcels which shall not be less than five per cent of the whole lot inspected, and shall be thoroughly mixed and divided into two samples, and placed in glass or metal vessels carefully sealed, and a label placed on each, stating the name or brand of the feeding stuff, or material sampled, the name of the party from whose stock the sample is drawn, and the date and place of taking such sample, and said label shall be signed by the director or his deputy and the party or parties at interest, or their representative present at the taking and sealing of said sample; provided, that where the party or parties at interest refuse to be present and take part in the sampling of the said feed stuffs, the director or his deputy may take said samples in the presence of two disinterested witnesses, one of said duplicate samples shall be retained by the director and the other shall be left with the party whose stock was sampled, and the sample or samples retained by the director shall be for comparison with the certified statements made in Articles 5894 and 5897 of this chapter. The result of the analysis of the sample or samples so prescribed, together with such additional information as circumstances advise, shall be published in reports or bulletins by the Texas Agricultural and Mechanical College from time to time. [R. S., Art. 5900.]

723. Statutory Definition of the Term "Importer."—The term, "importer," for all the purposes of this chapter shall be taken to mean all such persons as shall bring into or offer for sale within this State concentrated commercial feeding stuffs manufactured without this State. [R. S., Art. 5901.]

724. What Feed Stuffs Shall Be Deemed Adulterated.—For the purpose of this chapter, a feeding stuff shall be deemed to be adulterated if it contains any sawdust, dirt, damaged feed, or any foreign matter whatever, or if it is in any respect not what it is represented to be, or if any rice hulls or chaff, peanut shells, corncobs, oat hulls, or other similar substances of little or no feeding value are admixed therewith; provided, that no wholesome mixture of feeding stuffs shall be deemed to be adulterated if the true percentage of constituents thereof is plainly and clearly stated on the package and made known to the purchaser at the time of the sale. It shall be the duty of the director of the experiment station to examine, or have examined for adulteration, all suspicious samples of feeding stuffs, and such other samples as may be desirable. [R. S., Art. 5902.]

725. Duties and Powers of Director of Experiment Station to Adopt Standards, Etc.—The director of the experiment station is empowered to adopt standards or definitions for concentrated feedings stuffs, and such regulations as may be necessary for the enforcement of the law. The said director shall have the power to refuse the registration of any feeding stuff, under a name which would be misleading as to the material of which it is made up, or which does not conform to the standards or definitions aforesaid. Should any of said materials be registered and it is afterwards discovered that they are in violation of the above provisions, the said director shall have the power to cancel the registration ten days after notice. The director of the Texas Experiment Station is hereby empowered to adopt such regulations as may be necessary for the enforcement of all the provisions of this chapter. [R. S., Art. 5903.]

726. Disposition of Funds for Concentrated Commercial Feed Stuffs.—That all money or moneys heretofore or hereafter collected by the officers and employes of the Agricultural and Mechanical College, under the provisions of the pure feed acts, passed by the Twenty-ninth Legislature, being Chapters 108 and 118 of said acts, and amended by Chapter 131, Acts of the Thirtieth Legislature, regulating the sale of concentrated commercial feed stuffs, and so forth, and paid into the State Treasury, and not heretofore expended for and on behalf of the Agricultural and Mechanical Col-

lege, be and the same are hereby transferred and appropriated to the use and benefit of the Agricultural and Mechanical College of Texas; and the Treasurer of this State shall keep an account on his books, to be designated and known as "Pure Feed Fund of the Agricultural and Mechanical College," and to which said fund he shall at once transfer from the general fund all funds heretofore collected and paid into the general fund by said pure feed department of the Agricultural and Mechanical College under said acts (and not expended for the use of the Agricultural and Mechanical College), and shall place all funds hereafter collected under said acts to said fund. [R. S., Art. 5903a.]

727. Funds to Be Used; How—Board to Make Sworn Itemized Statement.—Said fund so appropriated and collected shall be used by the board of directors of the Agricultural and Mechanical College for making all necessary repairs at the Agricultural and Mechanical College, erection of buildings and other improvements, and for such other purposes as may be deemed advisable by the board of directors; and said funds shall be paid out by the State Treasurer on warrants issued by the president and secretary of the board of directors. The said board of directors shall, on the thirty-first day of August of each year, file a sworn report with the Governor, giving an itemized statement of all receipts and disbursements of said fund for the year ending on said date. [R. S.]

CHAPTER XXVI.

RELATING TO STATE, COUNTY AND CITY DEPOSITORIES OF PUBLIC FUNDS.

(From Chapters 1, 2 and 3, Title 44, R. S.)

	Sec.		Sec.
Duty of State Treasurer to Designate State Depository—Senatorial and Congressional Districts Defined	728	State Depository Shall Act How Long, Forfeiture for What Cause, etc., New Depository, etc.	744
Duty of State Treasurer to Call for Bids for Keeping Public Funds	729	Balances in Depositories to Be Equalized	745
Such Bids How Presented, etc.; Shall State What; Opening of Bids; Selection of Depository, etc.; no Award in Excess of Paid Up Capital Stock.....	730	State Depository to Issue to Treasurer on Demand, Draft, etc., on U. S. Reserve Bank, etc.	746
Where no Bids are Submitted—Duty of State Treasurer.....	731	Interest on Deposits to Become Part of General Revenue.....	747
Bank Complying With Requirements to Receive Deposit, etc....	732	Other New Bids to Be Taken When, How, etc.; Award; Collateral Securities; Bonds; Regulations, etc.	748
State Treasurer Must Be Satisfied that Bank is Solvent, and Shall Give Bond, etc.....	733	County Depositories—Commissioners' Courts to Call for Bids When and How	749
Bonds to Be Deposited as Collateral Security	734	Sealed Bids to Be Placed in Hands of County Judge—Regulations of	750
Bonds to Be Delivered to Treasurer; Additional Security When; Inspection; Recourse on; Indorsement, etc.....	735	Bids to Be Opened When—Interest, How Computed, etc.....	751
State Depository to Pay Interest on Average Daily Balance, etc.	736	Depository Selected to Execute Bond to Secure Funds.....	752
Collectors, etc., to Remit to State Treasurer, etc., Duty of Treasurer; Accounts	737	Commissioners' Court May Demand Additional Bonds When..	753
State Deposits in Excess of \$50,000 to Be Remitted to State Treasurer, etc., Forfeiture for Failure, etc., Notice, Suit	738	Proceedings on Approval of Bond—Duties of the County Treasurer	754
Books, etc., of Depository Open to Inspection, etc.....	739	Failure of Bidders for County Depositories—Power and Duty of Court	755
Deposit or Remittance of State Funds Made With or to Whom, and How	740	If Two or More Depositories; Clearing House to Be Selected..	756
Treasurer, Comptroller and Attorney General to Make Rules, etc.	741	County Treasurer's Checks Payable at County Seat, etc., Penalty	757
State Fund to Be Deposited in Depositories, Designated, etc., Provided, etc.	742	If Depository Not Located at County Seat, Requirements.....	758
Penalty for Refusal to Deposit State Funds, etc.....	743	County Warrants, How Paid, etc., and Charged; Statement; Bonds, etc.	759
		If no County Depository Selected, etc., May Select at Subsequent Term, etc.; Period.....	760
		New Bond May Be Required of County Depository, Penalty, if Not Given	761

	SEC.		SEC.
County Treasurer Not Responsible for Negligence of Depository; But, etc.....	762	City Warrants, How Paid, etc., and Charged; Checks Payable Where; Bonds, etc., Payment of	767
Bids from Adjoining County, When; Requirements	763	If no City Depository Selected, etc., May Select at Subsequent Meeting, etc., Period; New Bond; Penalty if Not Given; Treasurer Not Responsible, Except	768
City Depositories' Council to Take Bids for Depository, When and How; Bids to State What; Not to Be Opened Until	764	Restrictions Upon Drawing, etc., of Checks and Payment of Checks; Treasurer's Reports....	769
Opening of Bids—Award, How Made—Bond Required	765	Application of Provisions of This Chapter; Definition of Terms..	770
Order Designating City Depository; Transfer of Funds; Penalty; Penalty for Failure to Give Bond; New Bids, etc.....	766		

728. Duty of State Treasurer to Designate State Depository—
Senatorial and Congressional Districts Defined.—It shall be the duty of the State Treasurer, at the time and in the manner provided in this act, to designate a bank or banking institution in each Congressional District in the State of Texas, which shall be known as a State Depository. Said bank or banking institution must be a National bank or an incorporated company authorized to do business in the State of Texas, and must have a paid up capital stock of not less than \$25,000, and any such bank or banking institution may become a bidder under the provisions of any section of this act; but each such depository shall be established and conducted in accordance with and subject to the provisions of this act, and in no instance shall there be made to any such bank or banking institution any award of said funds greater than the amount of its paid up capital stock. Other depositories may be selected in lieu of those not selected from and for Congressional Districts and provided for herein. The term, "Senatorial District," wherever used herein, shall hereafter read and be construed to mean "Congressional District." [R. S., Art. 2417 as Amended.]

NOTE.—Arts. 2418 and 2419 repealed as shown on page 1888 Vernon Sayle's Revised Civil Statutes.

729. Duty of State Treasurer to Call for Bids for Keeping of Public Funds.—Immediately upon the qualification of each State Treasurer elected at a general election, it shall be his duty to cause to be printed a circular letter soliciting bids for keeping the public funds of the State for a term of two years next after the succeeding March 1, upon the conditions prescribed in this chapter. Said circular letter shall state the conditions to be complied with by the bidders, as hereinafter provided, and what each bid shall set forth, and shall require such bids to be forwarded to the State

Treasurer on or before twelve o'clock noon of the first Monday in February thereafter, and shall require that each bid shall be accompanied by a certified check for the sum of five hundred dollars, payable to the order of the State Treasurer, which shall become forfeited to the State in case said bid shall be accepted, and the bidder shall fail to comply with the requirements as provided by this chapter, for the qualification of depositories; otherwise, such check shall be returned to the bidder. The Treasurer shall mail a copy of such circular letter to each of the banks or banking institutions in the State, of the class before mentioned, and shall immediately deposit with the Comptroller and Attorney General a copy of such circular letter, and attach thereto a list of those to whom it has been mailed, as above provided; such copy and list so filed to be certified by the State Treasurer under his seal of office. The State Treasurer shall also keep a copy of such letter, and a list of those to whom it has been sent, on file in his office for the inspection of any person desiring to examine the same. [R. S., Art. 2420.]

730. Such Bids How Presented, Etc.; Shall State What; Opening of Bids; Selection of Depository, Etc.; No Award in Excess of Paid Up Capital Stock.—Bids sent to the State Treasurer shall be sealed up in a strong envelope and marked, "Bid for the safe-keeping and payment of the deposits of the State funds;" and the State Treasurer shall indorse thereon the time of the receipt of such bid. Such bid shall state the interest such bank will pay on the average daily balances to the credit of the State Treasury in such bank. Said bids shall be directed to the State Treasurer, and by him opened on the First Monday in February thereafter, in the presence of the Comptroller and Attorney General, and thereupon the Treasurer shall select and designate, with the approval of the Comptroller and Attorney General, one of such banks or banking institutions as the depository of the State for each Senatorial District. The Treasurer may, with the approval of the Comptroller and Attorney General, reject any and all bids; and, in any case, the bank or banking institution offering the highest interest from each Senatorial District shall be selected, if any. No award of State money shall be made upon any bid therefor greater than the paid up capital stock of the bank making such bid. [R. S., Art. 2421.]

731. Where No Bids Are Submitted; Duty of State Treasurer.—If for any one or more Congressional Districts no bids shall be submitted, or none shall be accepted, or the successful bidder shall fail to qualify, as provided herein, it shall be the duty of the State Treasurer immediately after the date fixed herein for the opening of bids to advertise for bids in such daily newspaper or newspa-

pers, of general circulation in the State, as they shall deem advisable (advisable) for proposals from any bank or banks of the class and character before mentioned in the State to keep, as a State depository as many equal portions according to the number of Congressional Districts of the State funds, not exceeding fifty thousand dollars as there are such Congressional Districts for which no depository has been selected not exceeding equal portions as herein before referred to, to be awarded to any one bidder; such bids to be submitted upon a date named in such notice not less than twenty nor more than thirty days subsequent to the first publication of said notice last above named upon the date named in such notice. The State Treasurer shall open all bids received in the presence of the Comptroller and Attorney General, and shall, with their approval and consent, award the keeping of the number of equal portions, as herein before referred to, of the State funds, for which proposals have been advertised for to the highest and best bidders therefor, at the discretion of the State Treasurer, Comptroller and Attorney General, one bidder making (making) a proposal under the provisions of this section, may be awarded the keeping of two equal portions or not exceeding one hundred thousand dollars of the State funds, and in such case such bidder shall deposit securities of double the value of the same class and character and give double the indemnity bond required by this act for depositories selected from Congressional Districts and shall be governed by all the restrictions and regulations imposed upon them by this act. All depositories selected under this section shall be required to file with their bids the same certified check to be forfeited under the same conditions, and their tenure shall terminate at the same time as depositories selected from Congressional Districts. No award shall in any case be made to any bidder under this section who shall propose to pay less than two per cent per annum on daily balances. For the purposes of this act the term, "equal portions," shall be construed to mean "as near as may be." [R. S., Art. 2422 as Amended.]

732. Bank Complying With Requirements to Receive Deposit, Etc.—When said bank or banking institution of any Senatorial District so designated by the State Treasurer has complied with the conditions of this chapter, it shall be authorized to receive on deposit from the State Treasurer, or under his direction, State funds not exceeding fifty thousand dollars for any one bank; and it shall be the duty of said State Treasurer to cause the funds of the State to be deposited in said State depositories subject to the conditions and limitations of this chapter. [R. S., Art. 2423.]

733. State Treasurer Must Be Satisfied That Bank Is Solvent, and Shall Give Bond, Etc.—Before the State Treasurer is authorized to deposit any State funds in any State depository herein provided for, or to cause the same to be so deposited, he shall satisfy himself as to the solvency of said institution; and, in addition thereto, he shall require a bond in the amount of twenty-five thousand dollars; which bond shall be payable to the Governor and to his successors in office; and said bond shall be conditioned for the safe-keeping of said funds deposited and to meet the requirements of this chapter, in such form as the Attorney General shall prescribe; and the same restrictions and requirements as to sureties thereon shall apply as are now or may be hereafter required in the bond of the State Treasurer. [R. S., Art. 2424.]

734. Bonds to Be Deposited as Collateral Security, Etc.—The State Treasurer shall also require the deposit as collateral security for such deposit of State funds, of United States, State, county, independent school district, irrigation, public road, drainage and levy (levee) bonds or municipal bonds in the sum of fifty thousand dollars; but before any State, county, irrigation, public road, drainage and levy (levee) bonds, or municipal bonds shall be received as collateral security in such cases, they must be registered with the Comptroller and approved by the Attorney General of the State of Texas, under the same rules and regulations as are now required for bonds in which the permanency school funds of the State are to be invested; provided, such county, municipal, independent school district, irrigation, public road or drainage and levy (levee) bonds must be worth not less than par. [Acts 1905, p. 388, Sec. 4; Acts 1913, p. 330, Sec. 1, amending Rev. Civ. St. 1911, Art. 2425.]

NOTE.—Section 2 of this act repeals all laws and parts of laws in conflict.

735. Bonds to Be Delivered to Treasurer; Additional Security, When; Inspection; Recourse On; Indorsement, Etc.—The bonds above mentioned shall be delivered to the State Treasurer and receipted for by him, and retained by him in the vaults of the State Treasury of this State; and if, in any case or at any time, such bonds are not satisfactory security to the Comptroller and Attorney General and Treasurer, for the deposits made under this chapter, they may require such additional security to be given as will be satisfactory to them; and the Comptroller, Attorney General and Treasurer shall, from time to time, inspect such bonds and see that the same are actually kept in the vaults of the State Treasury;

and, in the event that said bank or banks or banking institutions selected as State depositories shall fail to pay such deposits, or any part thereof, on the check or checks of the State Treasurer, he shall have power to forthwith convert such bonds into money, and disburse the same according to law upon the warrants drawn by the State Comptroller, upon the funds for which said bonds are security. Any bank making deposit of bonds with the State Treasurer under the provisions of this chapter may cause such bonds to be indorsed or stamped, as they may deem proper, so as to show that they are deposited as collateral, and are not transferable, except upon the conditions of this chapter. [R. S., Art. 2426.]

736. State Depository to Pay Interest On Average Daily Balance, Etc.—Any State depository receiving State funds under the provisions of this chapter, shall pay to the State Treasurer, at the end of each month, interest on the average daily balance for said month at the rate of interest agreed upon, which shall, in no event, be less than at the rate of two per cent per annum. [R. S., Art. 2427.]

737. Collectors, Etc., to Remit to State Treasurer, Etc.; Duty of Treasurer; Accounts.—All tax collectors in the State of Texas, and all officers charged with duty of remitting to the State Treasurer State funds shall, after the passage of this act, be required to remit all State funds to the State Treasurer as required by law prior to the enactment of Chapter 164 of the general laws of the State of Texas, passed by the regular session of the Twenty-ninth Legislature; and it shall be the duty of the Treasurer of the State of Texas to keep with each State depository in Texas a correct account showing a true and correct statement of the account of said depository with the State of Texas, and the balance on hand in each at the close of each day's business. [Acts 1905, p. 388, Sec. 9; Acts 1911, p. 2, Sec. 1; R. S., Art. 2428.]

738. State Deposits in Excess of \$50,000 to Be remitted to State Treasurer, Etc.; Forfeiture for Failure, Etc.; Notice, Suit.—If any State depository shall receive, or have on hand, State funds in excess of fifty thousand dollars, said State depository shall remit forthwith, on the first of the next month, said excess to the Treasurer of the State of Texas; and, in case any State depository shall fail or refuse to remit this excess, it shall forfeit its right to act as a State depository; and the State Treasurer shall, at once, close his account with said depository, notify all tax collectors and others charged with the duty of collecting public funds for the State of Texas; and the Attorney General of the State shall cause such action to be

taken, if any, as may be necessary to protect the State's interest in the premises. [R. S., Art. 2429.]

739. Books, Etc., of Depository Open to Inspection, Etc.—The books and accounts of any bank or banking institution designated as a State depository pertaining to public funds, shall, at all times, be open and subject to the inspection of the Treasurer of the State of Texas, the Attorney General or any district or county attorney of the State of Texas. [R. S., Art. 2430.]

740. Deposit or Remittance of State Funds Made With or to Whom, and How.—Any person whose duty it is to pay over to the State of Texas any money belonging thereto, or to any funds of said State, may pay the same to the State Treasurer, or he may remit the same to or deposit the same in any State depository which is then authorized to act as a State depository under this chapter, but, in case the party is a non-resident of the State of Texas, said money so due, or to become due, shall be remitted direct to the State Treasurer at Austin. In any event said money, or any money due the State or any of its funds may be sent by registered letter in due course of mail, by postoffice money order, express money order of any company authorized to do business in Texas, or by personal check, or bank draft on any incorporated State or National bank authorized to do business in Texas; but, in such cases, the liability of the person sending the same shall not cease until said money is actually received by the State Treasurer or State depository, in due course of business. [R. S., Art. 2431.]

741. State Treasurer, Comptroller and Attorney General to Make Rules, Etc.—The Treasurer, Comptroller, and Attorney General of the State of Texas shall have the right to make such rules and regulations governing the establishment and conduct of State depositories and State funds therein, as the public interest may require, not inconsistent with this chapter, which said rules and regulations shall be in writing. [R. S., Art. 2432.]

742. State Fund to Be Deposited in Depositories Designated, Etc.; Provided, Etc.—All State funds shall be deposited in State depositories designated under this chapter, subject to the limitations of this chapter; provided, that the State Treasurer is authorized to keep and retain in the State Treasury at Austin sufficient funds to meet the current expenses of the government in case he finds it advisable so to do. [R. S., Art. 2433.]

743. Penalty for Refusal to Deposit State Funds, Etc.—If any officer charged with the duty of depositing State funds shall refuse to so deposit the same in a depository authorized to receive the same he shall be liable on his official bond therefor, and for interest

on said amount which he has failed to so deposit, at the rate of five per cent per month, at the suit of the State or county, as the case may be; and this shall be a cause for removal from office.[R. S., Art. 2434.]

744. State Depository Shall Act How Long; Forfeiture for What Causes, Etc.; New Depository, Etc.—Any banking institution designated as a State depository shall continue to act as such until March first succeeding the next general election held after its designation, and until the undertaking of its successors has been accepted by the proper authority; provided, however, that in case any such institution shall fail or refuse to qualify as such depository within thirty days next after its bid for State or county funds has been accepted, in the manner provided for in this chapter, or, in case it shall fail or refuse to comply with any of the conditions of this chapter, or fail to discharge any of the duties thereunder, it shall be considered a just cause for forfeiting its rights to act as said State or county depository; and, in such case, the proper authorities shall be authorized to withdraw all State or county funds from such institution at any time after five days' notice of such intention; and, in such cases, a new State or county depository shall be established under the same rules and regulations as herein provided for the establishment thereof in the first instance. The same rules and regulations shall apply in establishing new depositories after the tenure of depositories provided for in this chapter has expired; that is, the money shall again be let to the highest bidder, as in the first instance, and all other regulations with reference thereto before provided herein shall apply; but, in any case arising under this chapter, where two or more of the highest bids are the same, another competitive bidding for said funds shall be ordered as in the first instance. [R. S., Art. 2435.]

745. Balances in Depositories to Be Equalized.—It shall be the duty of the State Treasurer to keep, and maintain, as nearly as possible, a fair and equal balance of moneys on hand in each State depository established by this chapter, in proportion to the amount each is entitled to receive, by drawing warrants alternately thereon or by apportioning the warrants so drawn. [R. S., Art. 2436.]

746. State Depository to Issue to Treasurer on Demand, Draft, Etc., on U. S. Reserve Bank, Etc.—On demand of the State Treasurer, any State depository shall issue to him or his order, free of charge, a draft or exchange on any bank in this State, designated by the United States authorities as a "Reserve Bank;" which draft may be in any sum stated by the State Treasurer not exceeding the amount of the State deposit in said depository. [R. S., Art. 2437.]

747. Interest on Deposits to Become Part of General Revenue.—All interest upon deposits which shall come into the State Treasury from State depositories shall become a part of the general revenue. [R. S., Art. 2438.]

748. Other New Bids to Be Taken, When, How, Etc.; Award; Collateral Securities; Bonds; Regulations, Etc.—If, for any one or more Senatorial Districts, no bids shall be submitted, or none shall be accepted, or the successful bidder shall fail to qualify as provided in this chapter, it shall thereupon become the duty of the State Treasurer immediately after the date of opening of the bids provided for in Article 2422, or upon the failure of the successful bidder to qualify, as the case may be, to advertise for bids in such daily newspaper or newspapers of general circulation in the State as said State Treasurer, Comptroller and Attorney General, or a majority of them, shall deem advisable, for proposals from banks or banking institutions of the class and character mentioned in preceding articles of this chapter, in this State, to keep a State depository; and as many thirty-firsts of the State funds as there shall then be such Senatorial Districts for which no depository shall have been selected, not exceeding, however, two such thirty-firsts to be awarded to any one bidder, but in no instance shall there be awarded to any one bidder any amount in excess of its paid up capital stock; all such bids to be delivered to the State Treasurer upon a day to be named in such advertisement, which shall not be less than twenty, nor more than thirty, days subsequent to the first publication of such advertisement. Upon the date named in such advertisement, the State Treasurer shall, in the presence of the Comptroller and the Attorney General, open all bids so received, and shall, with their approval and consent, award to the highest and best bidder therefor, respectively, the keeping of the number of such thirty-firsts of the State funds for which proposals have been so invited, and for which such bids have been so made; provided, that said State Treasurer, Comptroller and Attorney General may, should they deem it to be the best interests of the State, limit such award to only one such thirty-first of the State funds; at the discretion of the State Treasurer, Comptroller and Attorney General, any one or more bidders making a proposal under the provisions of this section (article) may, respectively, be awarded the keeping of two thirty-firsts of such State funds, not exceeding, however, in any instance more than one hundred thousand dollars, and not exceeding in any instance the amount of paid up capital stock of the bank or banking institution making such bid; and, in any and all such cases, such bidder shall deposit securities with the

State Treasurer of the same class and character and of double the value, and shall give indemnity bonds of similar character and in double the amount required by this chapter for depositories selected under the provisions of this chapter from senatorial districts, and shall be governed by all the restrictions and regulations imposed upon them by this chapter; provided, that any and all depositories selected and qualifying under this article shall, on the first day of each month (or if such first day be Sunday or a holiday, then on the next succeeding day) remit to the State Treasurer all State funds in excess of one hundred thousand dollars, then on hand, but subject to the provisions of Article 2433. All depositories selected and qualifying under this article shall, at all times, during such term be permitted to keep on deposit such amount of State funds as may have been awarded to them, respectively, under the provisions of this section (article). All provisions concerning certified checks in Article 2420 shall apply to advertisements, bids and bidders under this article, and the terms to be embraced in bids and awards under this article shall be the same as under Article 2435. No award shall, in any instance, be made under this article to any bidder whose bid shall be for less than two per cent per annum on daily balances in such depositories. [R. S. Art. 2439.]

749. County Depositories—Commissioners' Courts to Call for Bids, When and How.—The commissioners' court of each county in this State is authorized and required at the February term thereof, next following each general election to receive proposals from any banking corporation, association, or individual banker in such county that may desire to be selected as the depository of the funds of such county. Notice that such bids will be received shall be published by and over the name of the county judge, once each week for at least twenty days before commencement of such terms, in some newspaper published in said county; and if no newspaper be published therein, then in any newspaper published in the nearest county; and, in addition thereto, notice shall be published by posting same at the courthouse door of said county. [Acts 35th Leg., p. 16, 1917; R. S., Art. 2440.]

750. Sealed Bids to Be Placed in Hands of County Judge; Requisites of.—Any banking corporation, association or individual banker of such county desiring to bid, shall deliver to the county judge, on or before the first day of the term of the commissioners' court at which the selection of a depository is to be made, a sealed proposal, stating the rate of interest that said banking corporation, association, or individual banker and deposit offers to pay on the

funds of the county for the term between the date of such bid and the next regular time for the selection of a depository. Said bid shall be accompanied by a certified check for not less than one-half of one per cent of the county revenue of the preceding year as a guarantee of the good faith on the part of the bidder, and that, if his bid should be accepted, he will enter into the bond hereinafter provided; and upon the failure of the banking corporation, association or individual banker in such county that may be selected as such depository, to give the bond required by law, the amount of such certified check shall go to the county as liquidated damages, and the county judge shall readvertise for bids. [Acts 35th Leg., p. 16, 1917; R. S., Art. 2441.]

751. Bids to Be opened, When; Interest, How Computed, Etc.— It shall be the duty of the commissioners' court at 10 o'clock a. m., on the first day of each term, at which, by Article 2440, bids are required to be received, to publicly open such bids and cause each bid to be entered upon the minutes of the court, and to select as the depository of all the funds of the county the banking corporation, association or individual banker offering to pay the largest rate of interest per annum for said funds; provided, the commissioners' court may reject any and all bids. The interest upon such county funds shall be computed upon the daily balances to the credit of such county with such depository, and shall be payable to the county treasurer monthly, and shall be placed to the credit of the jury fund or to such funds as the commissioners' court may direct. When selection of a depository has been made, the checks of bidders whose bids have been rejected shall be immediately returned. The check of the bidder whose bid is accepted shall be returned when his bond is filed and approved by the commissioners' court, and not until such bond is filed and approved. [Acts 1917, 35th Leg.; R. S., Art. 2442.]

752. Depository Selected to Execute Bond to Secure Funds.— Within five days after the selection of such depository, it shall be the duty of the banking corporation, association or individual banker so selected to execute a bond or bonds, payable to the county judge and his successors in office, to be approved by the commissioners' court of said county, and filed in the office of the county clerk of said county, with not less than five solvent sureties, who shall own unincumbered real estate in this State not exempt from execution under the laws of this State of as great value as the amount of said bond (or of as great value as the amount of all of said bonds when more than one bond); and said bond or bonds shall in no event be for less than the total amount of revenue of

such county for the next preceding year for which the same are made; provided, that nothing herein shall prevent the making of such bond or bonds by a surety company or companies, as provided by law, and payable as herein provided. And provided further, that the commissioners' court may accept in lieu of such real estate or surety company security, bonds of the United States, or of the State of Texas or of any county, city, town or independent school district in the State, which shall be deposited as the commissioners' court may direct, the penalty of said bond or bonds not to be less than the total amount of the annual revenue of the county for the years for which said bond or bonds are given, and shall be conditioned for the faithful performance of all the duties and obligations devolving by law upon such depository, and for the payment upon presentation of all checks drawn upon said depository by the county treasurer of the county and that said county funds shall be faithfully kept by said depository and accounted for according to law. Any suits arising thereon shall be tried in the county for which such depository is selected. [Acts 1917, 35th Leg.; R. S., Art. 2443.]

An indemnity bond, executed in order to induce a county treasurer to deposit the funds of the county with a certain banker, is valid and enforceable in case of the failure of the bank. *Weddington v. Jones*, 41 C. A. 463, 91 S. W. 818.

753. Commissioners' Court May Demand Additional Bond; When.—Whenever, after the creation of a county depository as this chapter provided, there shall accrue to the county or any subdivision thereof, any funds or moneys from the sale of bonds or otherwise, the county commissioners' court of such county at its first meeting after such special funds shall have come into the treasury, or depository of such county, or so soon thereafter as may be practicable, may make written demand upon the duly accredited and established depository of the county for a special and additional bond as such depository in a sum equal to the whole amount of such special fund, to be kept in force so long as such fund remains in such depository, provided that such extra or special bond may be canceled and a new bond contemporaneously substituted therefor as such special fund may have been reduced, provided that such special bond shall at all times be sufficient in amount to cover such special fund then on hand, and provided that upon the failure of such depository to furnish additional bond within thirty days from the date of such demand, the county commissioners' court, may cause such special funds to be withdrawn upon the drafts of the

county treasurer from such depository, and cause the same to be deposited in some solvent National bank or State bank whose combined capital stock and surplus is in excess of such special fund, and to leave the same or so much thereof as may not have been expended with such National bank or State bank of last deposit, until such time that such county depository may have filed with the county commissioners' court the required additional bond, when such special fund or so much thereof as shall not have been expended shall be forthwith returned to and deposited with such county depository; provided that the requiring of such additional or special bond shall be optional with such county commissioners' court; provided that any depository bond made under the provisions of this act may be substituted for any prior existing depository bond at the time in operation or existence wherever the same may be agreeably done by and between such depository and the securities on such other existing depository bond. [Acts 35th Leg., 1917; R. S., Art. 2443a.]

754. Proceeding on Approval of Bond; Duties of the County Treasurer.—As soon as said bond be given and approved by the commissioners' court, and the State Comptroller of Public Accounts, an order shall be made and entered upon the minutes of said court designating such banking corporation, association or individual banker as a depository of the funds of said county until sixty days after the time fixed for the next selection of a depository; and, thereupon, it shall be the duty of the county treasurer of said county, immediately upon the making of such order, to transfer to said depository all the funds belonging to said county, as well as all funds belonging to any district or other municipal subdivision thereof not selecting its own depository, and immediately upon the receipt of any money thereafter, to deposit the same with said depository to the credit of said county, district and municipalities; and, for each and every failure to make such deposit, the county treasurer shall be liable to said depository for ten per cent, upon the amount not so deposited, to be recovered by civil action against such treasurer and the sureties on his official bond in any court of competent jurisdiction in the county. And thereupon, it shall also be the duty of the tax collector of such county to deposit all taxes collected by him, or under his authority, for the State and such county and its various districts and other municipal subdivisions, in such depository or depositories, as soon as collected, pending the preparation of his report of such collections and settlement thereon, which shall bear interest on daily balances at the same rate as such depository or depositories

have undertaken to pay for the use of county funds, and the interest accruing thereon shall be apportioned by the tax collector to the various funds earning the same. The bond of such county depository or depositories shall stand as security for all such funds. If the tax collector of such county shall fail or refuse to deposit tax money collected as herein required, he shall be liable to such depository or depositories for ten per cent upon the amount not so deposited and shall in addition be liable to the State and county and its various districts and other municipal subdivisions for all sums which would have been earned had this provision been complied with, which interest may be recovered in a suit by the State.

Upon such funds being deposited as herein required the tax collector and sureties on his bonds shall thereafter be relieved of responsibility for its safe-keeping. All moneys subject to the control of the county treasurer or payable on his order belonging to districts or other municipal subdivisions, selecting no depository are hereby declared to be "county funds" within the meaning of this chapter and shall be deposited in accordance with its requirements and shall be considered in fixing the amount of the bond of such depository. [Acts 35th Leg. 1917; R. S. Art. 2444.]

Where a new county depository is selected it cannot be forced to receive the county funds from the old depository until the expiration of sixty days next after the time fixed for the selection of the depository. Ruling of Attorney General, p. 774, 1914-16.

The provision of the county depository act to the effect that the depository selected has five days within which to file a bond is directory only and the commissioners' court would have authority to accept such bond after the expiration of five days if they so determined. Ruling of Attorney General, p. 775, 1914-16.

The bond of the depository must be approved by the commissioners' court and such court has no authority to delegate the power to approve the bond to the county judge. Ruling of Attorney General, p. 775, 1914-16.

755. Failure of Bidders for County Depositories—Power and Duty of Court.—If for any reason there shall be submitted no proposals by any banking corporation, association or individual banker to act as county depository, or in case no bid for the entire amount of the county funds shall be made, or in case all proposals made shall be declined, then in any such case the commissioners' court shall have the power, and it shall be their duty, to deposit the funds of the county with any one or more banking corporation, association or individual banker, in the county or in adjoining counties, in such sums and amounts and for such periods of time as may be deemed advisable by the court, and at such rate of in-

terest, not less than one and one-half per cent per annum, as may be agreed upon by the commissioners' court and the banker or banking concern receiving the deposit, interest to be computed upon daily balances due the county treasurer; and any banker or banking concern receiving deposits under this article shall execute a bond in the manner and form provided for depositories of all the funds of the county, with all the conditions provided for same, the penalty of said bonds to be not less than the total amount of county funds to be deposited with such banker or banking concern. [Acts 1917, 35th Leg.; R. S. Art. 2445.]

There being but one bid before the court, and that being for part only of the funds, the commissioners' court had full power, and it was their official duty if they deemed it advisable, to award to the bank making the bid the sum of money bid for, upon the rate of interest bid, which was in excess of the minimum prescribed by this act. *Worsham v. Dyer*, 43 C. A. 43, 94 S. W. 1081.

756. If Two or More Depositories; Clearing House to Be Selected.—When the funds of any county shall be deposited with two or more depositories, the commissioners' court shall select and name by order one of said depositories to act as a clearing house for the others, at which all county warrants shall be finally paid. [R. S. Art. 2446.]

757. County Treasurer's Checks Payable at County Seat, Etc., Penalty.—It shall be the duty of the depository to provide for the payment, upon presentment at the county seat of the county, of all checks drawn by the county treasurer upon the funds of said county, as long as funds of said county treasurer shall be in the possession of the depository subject to such checks; and, for every failure to pay such check or checks at the county seat of such county upon presentment, said depository shall forfeit and pay to the holder of such check ten per cent of the amount thereof; and the commissioners' court shall revoke the order creating such depository; provided, however, the amount of its bid shall not be returned, but shall be forfeited to the county. [R. S. Art. 2447.]

758. If Depository Not Located at County Seat, Requirements.—If any depository selected by the commissioners' court be not located at the county seat of such county, said depository shall file with the county treasurer of such county a statement designating the place at said county seat where, and the person by whom, all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid; and such depository shall cause every check to be paid upon presentation at the place so designated so long as the said depository has sufficient

funds to the credit of said county applicable to its payment. [R. S. Art. 2448.]

759. County Warrants, How Paid, Etc., and Charged; Statement; Bonds; Etc.—It shall be the duty of the county treasurer, upon the presentation to him of any warrant drawn by the proper authority, if there shall be money enough in the depository belonging to the funds upon which said warrant is drawn and out of which the same is payable, to draw his check as county treasurer upon the county depository in favor of the legal holder of said warrant, and to take up said warrant and to charge same to the fund upon which it is drawn; but no county treasurer shall draw any check upon the funds with said depository, unless there is sufficient money belonging to the fund upon which said warrant is drawn to pay the same; and no money belonging to said county shall be paid by said depository, except upon check of the county treasurer; and it shall be the duty of such depository to make a detailed statement to the county commissioners' court at each regular term of said court, showing the daily balances of the preceding quarter. In case any bonds, coupons, or other indebtedness of any county, by the terms thereof, are payable at any particular place other than the treasury of the county, nothing herein contained shall prevent the commissioners' court of any such county from causing the treasurer to place a sufficient sum at the place where such debts shall be payable at the time and place of their maturity. [R. S. Art. 2449.]

760. If no County Depository Selected, Etc., May Select at Subsequent Term, Etc.; Period.—If for any reason, no selection of a depository be made at the time provided by law, the commissioners' court may, at any subsequent time after twenty days' notice, select a depository in the manner provided for such selection at the regular time; and the depository so selected shall remain the depository until the next regular time for selecting a depository, unless the order selecting and naming such depository be revoked for lawful reasons. [R. S. Art. 2450.]

761. New Bond May Be Required of County Depositories; Penalty, If Not Given.—If the commissioners' court shall at any time deem it necessary for the protection of the county, it may require any depository to execute a new bond; and, if said new bond be not filed within five days from the time of the service of a copy of said order upon said depository, the commissioners' court may proceed to the selection of another depository in the manner provided for the selection of a depository at the regular time for such selection. [R. S. Art. 2451.]

762. County Treasurer Not Responsible for Negligence of Depository; But, Etc.—The county treasurer shall not be responsible for any loss of the county funds through the failure or negligence of any depository; but nothing in this chapter shall release any county treasurer for any loss resulting from any official misconduct or negligence on his part, or from any responsibility for the funds of the county, until a depository shall be selected and the funds deposited therein, or for any misappropriation of such funds by him. [R. S. Art. 2452.]

763. Bids From Adjoining County, When; Requirements.—If there be no bank situated within the county that seeks to select a county depository, then the county commissioners' court shall advertise for bids in the adjoining counties in the manner hereinbefore provided in Article 2450; provided, that when a depository has been selected by the county commissioners' court in the manner set forth in this act, said county depository shall, within five days after notice of such selection has been given to said depository, file with the county treasurer of such county a statement designating the place at said county seat where, and the person by whom, all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid. [R. S. Art. 2453.]

764. City Depositories—Council to Take Bids for Depository, When and How; Bids to State What; Not to Be Opened Until.—The city council of every city in the State of Texas incorporated under the general laws thereof, or incorporated under special charter, at its regular meeting in July of each year, is authorized to receive sealed proposals for the custody of the city funds, from any banking corporation, association, or individual banker, doing business within the city, that may desire to be selected as the depository of the funds of the city. The school funds from whatsoever source derived, of incorporated cities is part of the city funds and is subject to the provisions of this chapter. Notice that such bids will be received shall be published by the city secretary not less than one nor more than four weeks before such meeting, in some newspaper published in the city. Any banking corporation, association, or individual banker, doing business in the city desiring to bid, shall deliver to the city secretary, on or before the day of such meeting designated by said published notice, a sealed proposal, stating the rate per cent upon daily balances that such banking corporation, association, or individual banker, offers to pay to the city for the privilege of being made the depository of the funds of the city for the year next following the date of such

meeting; or, in the event that such selection shall be made for a less term than one year, as hereinafter provided, then for the time between the date of such bid and the next regular time for the selection of a depository as aforesaid. All such proposals shall be securely kept by the secretary, and shall not be opened until the meeting of the council for the purpose of passing upon same; nor shall any other proposals be received after they shall have been opened. [R. S. Art. 2454.]

Capps v. Citizens Nat. Bank of Longview (Civ. App.), 134 S. W. 808. *Manhattan Life Ins. Co. v. Cohen*, 139 S. W. 51.

765. Opening of Bids—Award, How Made—Bond Required.—Upon the opening of the sealed proposals submitted, the city council shall select as the depository of the funds of the city the banking corporation, association, or individual banker, offering to pay to the city the largest amount for such privileges; provided, however, the council shall have the right to reject any and all bids, and readvertise for new proposals. Within five days after the selection of such depository, it shall be the duty of the banking corporation, association, or individual banker, so selected, to execute a bond, payable to the city, to be approved by the mayor with the concurrence of the city council, and filed with the city secretary, with not less than three solvent sureties, who shall own unencumbered real estate in the county in which said city is located, of as great value as the amount of said bond; or said depository may make said bond in some approved fidelity and surety company, the penalty of said bond to be at least double the total revenues of the city for the preceding fiscal year, and conditioned for the faithful performance of all duties and obligations devolving by law or ordinance upon said depository, and for the payment upon presentation of all checks drawn upon said depository by the city treasurer, whenever any funds shall be in said depository applicable to the payment of said check, and that all funds of the city shall be faithfully kept by said depository, and with the interest thereon accounted for according to law; and for a breach of said bond, the city may maintain an action in its name. [R. S. Art. 2455.]

See *Capps v. Citizens Nat. Bank of Longview* (Civ. App.), 134 S. W. 808.

766. Order Designating City Depository; Transfer of Funds; Penalty; Penalty for Failure to Give Bond; New Bids, Etc.—As soon as said bond shall be given and approved, an order shall be

made by the council designating said banking corporation, association, or individual banker, as the depository of the funds of the city until the time fixed by this chapter for another selection, and such order shall be entered upon the minutes. It shall be the duty of the city treasurer, immediately upon the making of said order, to transfer to said depository all the funds in his hands belonging to the city, and, immediately upon the receipt of any money thereafter, he shall deposit the same with said depository to the credit of the city; and, for each and every failure to make such deposit, the treasurer and his bondsmen shall be liable to said depository for ten per cent per month upon the amount not so deposited, to be recovered by civil action in any court of competent jurisdiction. If any banking corporation, association, or individual banker, after having been selected as such depository, shall fail to give bond within the time provided by this chapter, then the selection of such banking corporation, association, or individual banker, as the depository of the city funds shall be set aside and be null and void, and the city council shall, after notice published in the manner hereinbefore provided, proceed to receive new bids and select other depository. [R. S. Art. 2456.]

See *Capps v. Citizens Nat. Bank of Longview* (Civ. App.), 134 S. W. 808.

767. City Warrants, How Paid, Etc., and Charged; Checks Payable Where; Bonds, Etc., Payment of.—It shall be the duty of the city treasurer, upon presentation to him of any warrant drawn by the proper authority, if there shall be enough money in the depository belonging to the fund upon which said warrant is drawn and out of which the same is payable, to draw his check as city treasurer upon the city depository in favor of the legal holder of said warrant, and to take up said warrant and charge the same to the fund upon which it is drawn; but in no case shall the city treasurer draw any check upon any fund in the city depository, unless there is sufficient money belonging to the fund upon which said warrant is drawn to pay the same. No money belonging to the city shall be paid out of the city depository, except upon the checks of the city treasurer; and all such checks shall be payable by said depository at its place of business in the city. In case any bonds or coupons or other indebtedness of the city are payable, by the terms of such bonds, coupons or other indebtedness, at any particular place other than the city treasury, nothing herein contained shall prevent the city council from causing the treasurer to withdraw from the depository and to place at the place where such bonds,

coupons or other indebtedness shall be payable at the time of their maturity, a sufficient sum to meet the same. [R. S. Art. 2457.]

See *Capps v. Citizens Nat. Bank of Longview* (Civ. App.), 134 S. W. 808.

768. If no City Depository Selected, Etc., May Select at Subsequent Meeting, Etc., Period; New Bond; Penalty if Not Given; Treasurer Not Responsible, Except.—If, for any reason, no selection of a depository is made at the time fixed by this chapter, the city council may, at any subsequent meeting, after notice published as hereinbefore provided, receive bids and select a depository in the manner herein set out, and the banking corporation, association, or individual banker, so selected shall remain the depository until the next regular term for the selection of a depository, unless the order selecting it be revoked for the causes specified in this chapter. If the city council shall at any time deem it necessary for the protection of the city, it may, by resolution, require the depository to execute a new bond; and, upon failure to do so within five days after the service of a copy of the resolution on said depository, the city council may proceed to select another depository in the manner hereinbefore provided. The city treasurer shall not be responsible for any loss of the city funds through the negligence, failure or wrongful act of such depository, but nothing in this chapter shall release said treasurer from responsibility for any loss resulting from any official misconduct on his part or from responsibility for the funds of city at any time when, for any reason, there shall be no city depository, or until a depository shall be selected and the funds deposited therein, or for any misappropriation of such funds in any manner by him. [R. S. Art. 2458.]

See *Capps v. Citizens Nat. Bank of Longview* (Civ. App.), 134 S. W. 808.

769. Restrictions Upon Drawing, Etc., of Checks and Payment of Checks; Treasurer's Report.—No check shall be drawn upon the city depository by the treasurer, except upon a warrant signed by the mayor and attested by the secretary. No warrant shall be drawn by the mayor and secretary upon any of the special funds created for the purpose of paying the bonded indebtedness of said city, in the hands of the city treasurer, or in the depository, for any purpose whatsoever other than to pay the principal or interest of said indebtedness, or for the purpose of investing said special fund according to law. No city treasurer shall pay or issue a check to pay any money out of any special fund created for the purpose of paying any bonded indebtedness of said city other than for the pur-

pose of paying interest due on said bonds, the principal of said bonds, or for the purpose of making an investment of said fund according to law. The treasurer shall report to the council on or before its first regular meeting of July in each year, the amount of receipts and expenditures of the treasury, the amount of money on hand in each fund, and the amount of bonds falling due for the redemption of which provision must be made; also the amount of interest to be paid during the next fiscal year, and such other reports as the existing law requires of him. [R. S. Art. 2459.]

See *Capps v. Citizens Nat. Bank of Longview* (Civ. App.), 134 S. W. 808.

770. Application of Provisions of This Chapter; Definition of Terms.—All provisions of this chapter shall apply to towns and villages incorporated under the general laws of Texas, as well as to cities so incorporated, and the term, "city council," as herein used, shall be construed to include the board of aldermen of such towns and villages; the terms, "city secretary" and "secretary," shall be construed to include the clerk or secretary of such towns and villages; the term, "city treasurer," shall be construed to include the treasurer of such towns and villages, and the term, "city," shall be construed to include towns and villages. [R. S. Art. 2460.]

See *Capps v. Citizens Nat. Bank of Longview* (Civ. App.), 134 S. W. 808.

Property of a city not held for public purposes is subject to execution on a judgment against the city. *City of Laredo v. Nalle*, 65 Tex. 362; *City of Sherman v. Williams*, 84 Tex. 422, 19 S. W. 606, 31 Am. St. Rep., 66; *City of Laredo v. Benevides* (Civ. App.), 25 S. W. 482.

As a general rule execution cannot be awarded to enforce a judgment against a municipal corporation, and this general rule must obtain, as we have no statute providing otherwise. *City of McGregor v. Cook*, 4 App. C. C. par. 141, 16 S. E. 936.

Execution may run against city. *Gordon v. Thorp* (Civ. App.), 53 S. W. 357.

Funds of a city deposited in a city depository as provided by law cannot be subjected to the city's debts by garnishment. *Capps v. Citizens Nat. Bank of Longview* (Civ. App.), 134 S. W. 808.

A general creditor of a city cannot subject to his debt money applicable to current expenses and insufficient thereof. *Id.*

An action against the Attorney General, the State Comptroller, and the State Treasurer to enjoin the assessment and collection of a tax is not a suit against the State, but against the individual officers. *Galveston, H. & S. A. Ry. Co. v. Davidson* (Civ. App.), 93 S. W. 436; *Texas & P. Ry. Co. v. Stephens*, *Id.*; *Gulf, C. & S. F. Ry. Co. v. Davidson*, *Id.*; *Missouri, K. & T. Ry. Co. of Texas v. Same*, *Id.*; *International & G. N. Ry. Co. v. Stephens*, *Id.*; *St. Louis Southwestern Ry. Co. of Texas v. Davidson*, *Id.*; judgment reversed *Stephens v. Texas & P. Ry. Co.*, 100 Tex. 177, 97 S. W. 309; *State v. Galveston, H. & H. Ry. Co. of 1882* (Civ. App.), 93 S. W. 460, 469; *Texas &*

P. Ry. Co. v. State (Civ. App.), Id. 461, 469; *St. Louis Southwestern Ry. Co. of Texas v. Same*, Id.; *Missouri, K. & T. Ry. Co. of Texas v. Same* (Civ. App.), Id. 462, 469; *Houston, E. & W. T. Ry. Co. v. Same*, Id.; *Houston & T. C. R. Co. v. Same* (Civ. App.), Id. 463, 469; *Texas & N. O. R. Co. v. Same*, Id.; *Galveston, H. & S. A. Ry. Co. v. Same* (Civ. App.), 93 S. W. 464, judgment reversed *State v. Galveston, H. & S. A. R. Co.*, 100 Tex. 153, 97 S. W. 71, Id. (Civ. App.), 93 S. W. 469; *International & G. N. R. Co. v. Same* (Civ. App.), Id. 465, 469; *Ft. Worth & D. C. Ry. Co. v. Same*, Id.; *Chicago, R. I. & G. Ry. Co. v. Same* (Civ. App.), Id. 466, 469; *San Antonio, & A. P. Ry. Co. v. Same*, Id.; *State v. St. Louis, B & M. R. Co.* (Civ. App.), Id. 467, 469; *Gulf, C. & S. F. Ry. Co. v. Same*, Id.; *Texas Midland R. Co. v. Same* (Civ. App.), Id. 468, 469; *State v. Texas & P. Ry. Co.*, 100 Tex. 279, 98 S. W. 834.

A suit against State officers to restrain the collection of a privilege tax on the operation of oil wells, imposed by Acts Twenty-ninth Legislature, p. 358, c. 148, is in fact a suit against the State, and cannot be maintained without its consent. *Producers' Oil Co. v. Stephens*, 44 C. A. 327, 99 S. W. 157; *Stephens v. Morning Star Oil Co.* (Civ. App.), 99 S. W. 159; *Southwestern Oil Co. v. State*, Id.

In ejectment by the State to recover an island, one of the defendants was not entitled by cross-bill to raise issue and obtain affirmative relief, under the rule that a citizen may not sue the State without its consent. *Texas Channel & Dock Co. v. State* (Civ. App.), 133 S. W. 318, judgment reversed 104 Tex. 168, 135 S. W. 522.

State officers trespassing upon property given by Legislative enactment to the exclusive custody and possession of a private corporation held liable as any other trespasser would be; a suit against them not being a suit against the State. *Conley v. Daughters of the Republic of Texas* (Civ. App.), 151 S. W. 877.

A suit against officers of a county to restrain the collection of taxes assessed against property is not a suit against the State, so as to require the consent of the Legislature to its institution. *Porter v. Langley* (Civ. App.), 155 S. W. 1042.

A suit by the Daughters of the Republic of Texas against the superintendent of public buildings and ground of the State to enjoin defendant from entering upon the Alamo property on the ground that it was given to the custody of plaintiff corporation by Act Jan. 26, 1905 (Acts Twenty-ninth Legislature, c. 7), is not action against the State so as to be prohibited. *Conley v. Daughters of the Republic* (Sup.), 156 S. W. 197.

CHAPTER XXVII.

RELATING TO THE DUTIES, FEES AND COMPENSATION OF PUBLIC OFFICERS.

(Compiled From Revised Civil Statutes, State of Texas.)

	Sec.		Sec.
Fees Taxed Against Corporations by Secretary of State.....	771	Fiscal Year Defined, and Regulation of Reports.....	790
Minimum Fees in Certain Cases..	772	Officers to Make Monthly Report, Statement of Expenses; Audit, etc.	791
Pending Suit Not Affected.....	773	Certain Officers Not Required to Report Fees or Keep Statements; Proviso as to District Attorney	792
Fees Paid in Advance to Secretary and by Him to Treasury Monthly	774	Collector and Assessor to File With Comptroller Copies of Sworn Statements	793
The Fee Bill; Maximum Amount of Fees Allowed to Be Retained by Certain Officers.....	775	Officer Recovering Money or Fees Belonging to Another, Shall Inform Him and Pay Over on Demand, etc.....	794
Maximum Fees in Certain Counties	776	Officers to Report Fees Collected, etc., Requisites of Report.....	795
Maximum Fees in Counties Containing City of Twenty-five Thousand Inhabitants, etc.....	777	Officers to Pay Over Fees, etc., to Treasurer After Four Years, etc., Statements; Disposition..	796
County Attorney, Compensation in Certain Counties.....	778	Officer May Appoint Deputies, How; County Judge Not to Influence Appointment, etc., Compensation, How Paid.....	797
District Attorney, Compensation of	779	Duty of District and County Attorneys to Give Opinion, etc., to Officers	798
County Judge, Compensation as Superintendent of Public Instruction	780	Duty of District and County Attorneys to Give Opinion; etc., to County and Precinct Officers	799
Last United States Census to Govern in All Cases.....	781	State's Attorneys With the Consent of Attorney General to Buy Property	800
Amounts Allowed to Be Retained Out of Fees Collected; State Not Responsible	782	State's Attorneys May Sell Property Bought for State, With Consent of Attorney General....	801
Disposition of Fees of Office, Excess Fees, etc.....	783	Attorney Representing County May Sell Property of County....	802
Officer Not Collecting Maximum Fees, etc., May Retain Out of Delinquent Fees Collected, Remainder Paid to Treasurer.....	784	Duty of County Attorney to Give Receipt for Money Collected	803
Fees of District Clerks in Counties Having More Than One District	785	Duty of State Comptroller to Prescribe Forms	804
Delinquent Fees, Collection of, Commissions on, Remainder Paid to Treasurer.....	786	State Comptroller Shall Keep Ledger for Accounting of Tax Collectors	805
Compensation for Ex Officio Services, When May Be Allowed by Commissioners' Court; Proviso	787		
Officials Named in Articles 3881 to 3886 to Keep Accounts; Duty of Grand Jury and District Judge as to.....	788		
Officers to Make Sworn Statement, etc., to Show What.....	789		

	SEC.		SEC.
Per Diem Pay of County Commissioners	806	What Officers Entitled to Receive Copies of Laws.....	816
Assessor's Compensation	807	How Printed Laws Shall Be Distributed	817
Collector's Compensation	808	Certain Allowance to Tax Collector	818
County Treasurer's Commission.....	809	Certain Manufacturers Required to Pay Registry Fees to Pure Food Department	819
County Treasurer's Commission on School Funds.....	810	Data to Be Furnished Commissioner of Agriculture by Tax Assessor	820
Commissions Shall Not Exceed \$2,000 Annually	811	Comptroller Required to Keep Revenue Ledger	821
Collector's Fees and How Paid....	812	Fees That May Be Charged by Pharmacy Board	822
Compensation of Special School Taxes for Assessment and Collection	813		
List of Voters Furnished, to Be Used in Primary, etc.....	814		
Duty of Collector to Furnish Lists	815		

771. Fees Taxed Against Corporations by Secretary of State.—

The Secretary of State, besides other fees that may be prescribed by law, is authorized and required to charge for the use of the State the following fees:

For each and every charter, amendment or supplement thereto of a private corporation created for the purpose of operating or constructing a railroad, magnetic telegraph line or street railway or express company, authorized or required by law to be recorded in said department, a fee of two hundred dollars to be paid when said charter is filed; provided, that if the authorized capital stock of said corporation shall exceed one hundred thousand dollars, it shall be required to pay an additional fee of fifty cents for each one thousand dollars authorized capital stock, or fractional part thereof, after the first.

For each and every charter, amendment or supplement thereto, of a private corporation intended for the support of public worship, any benevolent, charitable, educational, missionary, literary or scientific undertaking, the maintenance of a library, the promotion of painting, music or other fine arts, the encouragement of agriculture or horticulture, the maintenance of public parks, the maintenance of a public cemetery not for profit, a fee of ten dollars to be paid when the charter is filed.

For each and every charter, amendment or supplement thereto, of a private corporation created for any other purposes intended for mutual profit or benefit, a fee of fifty dollars shall be paid when said charter is filed provided, that, if the capital stock of said corporation issued and outstanding shall exceed ten thousand dollars, it shall be required to pay an additional fee of ten dollars for each additional ten thousand dollars of its authorized capital stock, or fractional part thereof, after the first, and provided further that

such fee shall not exceed the sum of twenty-five hundred dollars.

For each commission to every officer elected or appointed in this State, a fee of one dollar; and each and every State, district, county and precinct officer, elected or appointed in this State is required to apply for and receive his commission; provided that the Secretary of State shall not be required to forward copies of laws to nor attest the authority of any officer in this State who fails or refuses to take out his commission as required herein.

For each official certificate, a fee of one dollar.

For each warrant of requisition, a fee of two dollars.

For every remission of fine or forfeiture, one dollar.

For copies of any paper, document or record in his office for each one hundred words, fifteen cents.

For each and every charter, amendment or supplement thereto, taken out under Chapter 16, Title 25, Revised Statutes, (channel and dock corporations), a fee of two hundred dollars shall be paid to the Secretary of State for the use and benefit of the State, which shall be paid when the charter, amendment or supplement thereto is filed for record.

For each foreign corporation obtaining permit to do business in this State, there shall be paid to the Secretary of State as permit fees the following; fifty dollars for the first ten thousand dollars of its capital stock issued and outstanding and ten dollars for each additional ten thousand dollars or fractional part thereof; provided, that in no event shall such fee exceed the sum of twenty-five hundred dollars; provided, that the fee required to be paid by any foreign corporation for a permit to engage in the manufacture, sale, rental, lease or operation of all kinds of cars, or to engage in conducting, operating or managing any telegraph line in this State, shall in no event exceed the sum of twenty-five hundred dollars; and provided further that mutual building and loan companies, so called, whose stock is not permanent, but withdrawable, shall pay a fee of fifty dollars for the first one hundred thousand dollars or fractional part thereof of its capital stock issued and outstanding and ten dollars for each additional one hundred thousand dollars or fractional part thereof and where the company is a foreign one, then the fee shall be based upon the capital invested in the State of Texas. [Acts 1917, p. 169.— R. S. Art. 3837.]

772. Minimum Fees in Certain Cases.—The minimum fee for any foreign building and loan company shall be two hundred and fifty dollars; provided, further, that the fee required to be paid by any foreign corporation for a permit to do the business of loan-

ing money in this State shall in no event exceed one thousand dollars. [R. S. Art. 3838.]

773. Pending Suit Not Affected.—Nothing in this chapter, nor in Articles 1315 and 1316, shall in anywise affect any suit now pending in the name, or in behalf of, the State of Texas, as against any foreign corporation. [R. S. Art. 3839.]

774. Fees Paid in Advance to Secretary and by Him to Treasury Monthly.—All fees mentioned in Articles 3837 and 3838 shall be paid in advance into the office of the Secretary of State, and shall be by him paid into the State Treasury monthly. [R. S. Art. 3840.]

See *Western Union Telegraph Company v. State* (Civ. App.), 121 S. W. 194.

The Secretary of State cannot charge a fee of \$1.00 for making indorsement on railroad bonds required by Revised Statutes, 1895, Art. 4581i. *State Ex. Rel, G. H. & N. Ry. Co. v. Hardy*, 93 Tex. 340, 55 S. W. 322, 323.

When a corporation files an amendment to its charter that does not increase its capital stock, it is only required to pay the fixed fee of \$1.00, and nothing additional. *St. L. S. W. Ry. Co. v. Tod*, 94 Tex. 623, 64 S. W. 779.

See Art. 5011. No taxes for franchises on water user's associations.

See Art. 1223. No franchise taxes necessary on organizations under Chap. 11, Title 25, R. S.

775. The Fee Bill; Maximum Amount of Fees Allowed to Be Retained by Certain Officers.—Hereafter the maximum amount of fees of all kinds that may be retained by any officer mentioned in this section (article) as compensation for services shall be as follows: County judge, an amount not exceeding two thousand two hundred and fifty dollars per annum; sheriff, an amount not exceeding two thousand, seven hundred and fifty dollars per annum; clerk of the county court, an amount not exceeding two thousand, two hundred and fifty dollars per annum; county attorney, an amount not exceeding two thousand, two hundred and fifty dollars per annum; clerk of the district court, an amount not exceeding two thousand, two hundred and fifty dollars per annum; collector of taxes, an amount not exceeding two thousand, two hundred and fifty dollars per annum; assessor of taxes, an amount not exceeding two thousand, two hundred and fifty dollars per annum; justices of the peace, an amount not exceeding two thousand dollars per annum; constables, an amount not exceeding two thousand dollars per annum, provided, that this Act shall not apply to justices of the peace or constables except those holding offices in cities of more than twenty thousand inhabitants, to be determined by the last United States census. [Acts 1913, p. 246, Sec. 1.—R. S. Art. 3881.]

"Fees of all kinds" as applied to county clerk mean every kind of compensation allowed such officer by law, unless excepted by some provision of the act. *Navarro County v. Howard*, 129 S. W. 857.

See also *Ellis County v. Thompson*, 95 Tex. 22, 66 S. W. 49.

This section is not repugnant to Sec. 21, of Art. 5 of the Constitution of the State of Texas, providing a salary of \$500 per year for district attorneys, and that county attorneys shall receive only such fees, etc., as shall be provided by law. *Hare v. Grayson County*, 51 S. W. 656.

776. Maximum Fees in Certain Counties.—In any county shown by the last United States census to contain as many as twenty-five thousand inhabitants, the following amounts shall be allowed, viz: County judge, an amount not exceeding twenty-five hundred dollars per annum; sheriff, an amount not exceeding three thousand dollars per annum; clerk of the county court, an amount not exceeding twenty-four hundred dollars per annum; county attorney, an amount not exceeding twenty-four hundred dollars per annum; district attorney, an amount not exceeding twenty-five hundred dollars per annum, inclusive of the five hundred dollars allowed by the Constitution and paid by the State; clerk of the district court, an amount not exceeding twenty-four hundred dollars per annum; collector of taxes, an amount not exceeding twenty-four hundred dollars per annum; assessor of taxes, an amount not exceeding twenty-four hundred dollars per annum. [Acts 1913.—R. S. Art. 3882.]

777. Maximum Fees in Counties Containing City of Twenty-five Thousand Inhabitants, etc.—In counties containing a city of over twenty-five thousand inhabitants, or in such counties as shown by the last United States census, shall contain as many as thirty-eight thousand inhabitants, the following amounts of fees shall be allowed, viz: County judge, an amount not exceeding thirty-five hundred dollars per annum; sheriff, an amount not exceeding thirty-five hundred dollars per annum; clerk of the county court, an amount not exceeding twenty-seven hundred and fifty dollars per annum; county attorney, an amount not exceeding thirty-five hundred dollars per annum; district attorney, an amount not exceeding twenty-five hundred dollars, inclusive of the five hundred dollars allowed by the Constitution and paid by the State; clerk of the district court, an amount not exceeding twenty-seven hundred and fifty dollars per annum; collector of taxes, an amount not exceeding twenty-seven hundred and fifty dollars per annum; assessor of taxes, an amount not exceeding twenty-seven hundred and fifty dollars per annum, provided, the compensation fixed herein for sheriffs and their deputies shall be exclusive of any rewards

received for the apprehension of criminals or fugitives from justices. [Acts 1913.—R. S. Art. 3883.]

Chapter 121, Acts of the Thirty-third Legislature, amending the fee bill, puts the officers named therein in all the counties of the State under the operation of the law, except as to keeping books and making reports by officers in counties having a population of 25,000 and less, as provided in Art. 3898. Ruling of Attorney General, 1914.

778. County Attorney, Compensation in Certain Counties.—The county attorney in those counties having no district attorney, where he performs the duties of district attorney, may receive the same compensation as provided for the district attorney. [Act 1913; R. S. Art. 3884.]

NOTE.—For fees of county attorney in lunacy cases, see Art. 165, R. S.

779. District Attorney, Compensation of.—The maximum fixed for the compensation of the district attorney shall be construed to be the amount which that officer is authorized to retain of fees allowed such officer in his district, whether composed of one or more counties. [Act 1913; R. S. Art. 3885.]

780. County Judge, Compensation as Superintendent of Public Instruction.—In counties where a county judge acts as superintendent of public instruction, he shall receive such other salary as may be provided by the commissioners' court, not to exceed the sum of six hundred dollars per annum. [Act 1913; R. S. Art. 3886.]

Article 3886 above authorizes the commissioners' court to allow county judges for services as county superintendent of public instruction a salary not exceeding \$600 per year. *Stevens v. Campbell*, 63 S. W. 162.

781. Last U. S. Census to Govern in All Cases.—The last United States census shall govern as to the population in all cases. [Act 1913; R. S. Art. 3887.]

782. Amounts Allowed to Be Retained Out of Fees Collected; State Not Responsible.—The amounts allowed to each officer mentioned in Articles 3881 to 3886, inclusive, may be retained out of the fees collected by him under existing laws; but in no case shall the State or the county be responsible for the payment of any sum when the fees collected by any officer are less than the maximum compensation allowed by this chapter, or be responsible for the pay of any deputy or assistant. [Acts 1897, S. S., p. 9, Sec. 11; Acts 1907, p. 50; Acts 1913, Chap. 121; R. S. Art. 3888.]

The term "maximum" held to mean the specified sum of \$2500. and the words "The excess of the fees collected by the said officers" represent that

amount which remains after taking from the whole the maximum and the amount paid to assistants or deputies. *Ellis County v. Thompson*, 64 S. W. 927.

783. Disposition of Fees of Office, Excess Fees, Etc.—Each officer named in this chapter shall first, out of the fees of his office, pay or be paid, the amount allowed him, under the provisions of this chapter, together with the salaries of his assistants or deputies. If the fees of such office collected in any year be more than the amount needed to pay the amount allowed such officer and his assistants and deputies, same shall be deemed excess fees, and of such excess fees such officer shall retain one-fourth; and in counties having between 25,000 and 38,000 inhabitants until such one-fourth amounts to the sum of twelve hundred and fifty dollars; and counties containing a city of more than 25,000 population, or in which county the population exceeds 38,000, until such one-fourth amounts to the sum of fifteen hundred dollars, such population to be based on the United States census last preceding any given year. All amounts received by such officer as fees of his office besides those which he is allowed to retain by the provisions of this chapter, shall be paid into the county treasury of such county. [Act 1913, Chap. 121; R. S. Art. 3889.]

When excess fees are collected and wrongfully appropriated by a tax assessor during his second term of office, but which he should have collected during his first term, the bondsmen on his second bond and not those on his first bond are liable. *Dallas County v. Bolton*, 158 S. W. 1152 (T. C. A.).

A tax collector is not liable to the county for a fee claimed by an assessor for the collection of delinquent fees, when the order of the State Comptroller for such fees was not presented before the fees became delinquent, though he had sufficient funds on hand to pay same. *Dallas County v. Bolton* (T. C. A.), 158 S. W. 1152.

An indictment which charges the tax assessor with failure to make report of the fees, collected by him, as required by law to be made in counties of over 15,000 population, should also allege that said county had such population. *Bolton v. State* (T. C. A.), 154 S. W. 1197.

784. Officer Not Collecting Maximum Fees, Etc., May Retain Out of Delinquent Fees Collected, Remainder Paid to Treasurer.—Any officer mentioned in Articles 3881 to 3886, who does not collect the maximum amount of his fees for any fiscal year and who reports delinquent fees for that year, shall be entitled to retain, when collected, such part of such delinquent fees as is sufficient to complete the maximum compensation for the year in which delinquent fees were charged, and also to retain the one-fourth of the excess belonging to him, and the remainder of the delinquent fees for that

fiscal year shall be paid as herein provided for when collected. [R. S. Art. 3890.]

Under Arts. 3889, 3892 R. S., which allow assessors one-fourth of the fees in excess of their salary and expenses and an additional 10% of all delinquent fees collected by him, an assessor is not entitled to a percentage of the delinquent fees due the State when such delinquency was caused by his failure to present the order of such fees sent him by the State Comptroller, as required by Art. 7584 R. S. *Dallas Co. v. Bolton*, 158 S. W. 1152.

785. Fees of District Clerks in Counties Having More Than One District.—In all counties in this State having more than one judicial district, the district clerks thereof shall in no case be allowed fees in excess of the maximum fees allowed clerks in counties having only one district court. [R. S. Art. 3891.]

786. Delinquent Fees, Collection of, Commissions on, Remainder Paid to Treasurer.—All fees due and not collected as shown in the report required by Article 3895, shall be collected by the officer to whose office the fees accrued; and out of such part of delinquent fees as may be due the county, the officer making such collection shall be entitled to ten per cent of the amount collected by him, and the remainder shall be paid into the county treasury, as provided in Article 3889 of this act. It shall not be legal for any officer to remit any fee that may be due under the law fixing fees. [Acts 1897, S. S., p. 10, Sec. 13; R. S. Art. 3892.]

The county clerk cannot remit fees due him by contract with the county. *Russell v. Cordwent*, 152 S. W. 239.

After a county clerk goes out of office he has no right to collect fees that accrued to his office while he was the incumbent. *Ellis County v. Thompson*, 95 Tex. 22.

787. Compensation for Ex Officio Services, When May Be Allowed by Commissioners' Court; Proviso.—The commissioners' court is hereby debarred from allowing compensation for ex officio services to county officials when the compensation and excess fees which they are allowed to retain shall reach the maximum provided for in this chapter. In cases where the compensation and excess fees which the officers are allowed to retain shall not reach the maximum provided for in this chapter, the commissioners' court shall allow compensation for ex officio services when, in their judgment, such compensation is necessary; provided, such compensation for ex officio services allowed shall not increase the compensation of the official beyond the maximum amount of compen-

sation and excess fees allowed to be retained by him under this chapter. [Act 1913, Chap. 121; R. S. Art. 3893.]

See note under Art. 3881.

Though ex officio fees may be allowed, yet they cannot increase the amount of compensation beyond the maximum amount of fees provided for in the law. Ruling of Attorney General, 1914.

The commissioners' court cannot make up ex officio compensation for the amount allowed by way of excess fees, but when there are no excess fees it would have a right only to allow ex officio compensation to make up any difference there might be between the net fees accruing to the office and the maximum amount of fees allowed under the statute. Ruling of Attorney General, 1915.

The sheriff would be allowed to retain out of the fees of his office the maximum named in Art. 3893, after the payment of his assistants and of whatever expenses are allowed under Art. 3897. If then sufficient fees remain to cover the maximum he would not be entitled to any ex officio salary or compensation. Ruling of Attorney General, 1915.

This article empowers commissioners' courts to give county attorneys compensation for ex officio services rendered and for which no fee is otherwise provided. Ruling of Attorney General, 1914.

Commissioners cannot pay county attorney salary as legal adviser to the court. Ruling of Attorney General, 1914.

788. Officials Named in Articles 3881 to 3886 to Keep Accounts; Duty of Grand Jury and District Judge as to.—It shall be the duty of those officials named in Articles 3881 to 3886, and also the sheriffs, to keep a correct statement of the sums coming into their hands as fees and commissions, in a book to be provided by them for that purpose, in which the officer at the time when any fees or moneys shall come into his hands shall enter the same; and it shall be the duty of the grand jury (and the district judge shall so charge the grand jury) to examine these accounts at the session of the district court next succeeding the first day of December of each year, and make a report on same to the district court at the conclusion of the session of the grand jury. [R. S. Art. 3894.]

789. Officers to Make Sworn Statement, Etc., to Show What.—Each officer mentioned in Articles 3881 to 3886, and also the sheriff, shall, at the close of each fiscal year, make to the district court of the county in which he resides a sworn statement showing the amount of fees collected by him during the fiscal year and the amount of fees charged and not collected, and by whom due, and the number of deputies and assistants employed by him during the year, and the amount paid, or to be paid each. [Acts 1897, S. S., p. 11; Acts 1907, p. 50; R. S. Art. 3895.]

790. Fiscal Year Defined, and Regulation of Reports.—A fiscal year, within the meaning of this chapter, shall begin on December 1 of each year; and each officer named in Articles 3881 to 3886, and also the sheriff, shall file the reports and make the settlement required in this chapter on December 1 of each year. Whenever such officer serves for a fractional part of a fiscal year, he shall nevertheless file his report and make a settlement for such part of a year as he serves, and shall be entitled to such proportional part of the maximum allowed as the time of his services bears to the entire year. However, an incoming officer elected at the general election, who qualifies prior to December 1 next following, shall not be required to file any report or make any settlement before December 1 of the following year; but his report and settlement shall embrace the entire period dated from his qualification. [Acts 1897, S. S., p. 11, Sec. 19; R. S. Art. 3896.]

791. Officers to Make Monthly Report, Statement of Expenses; Audit, Etc.—At the close of each month of his tenure of such office each officer whose fees are affected by the provisions of this act shall make as a part of the report now required by law, an itemized and sworn statement of all the actual and necessary expenses incurred by him in the conduct of his said office, such as stationery, stamps, telephone, traveling expenses and other necessary expense. If such expense be incurred in connection with any particular case, such statement shall name such case. Such expense account shall be subject to the audit of the county auditor, and if it appear that any item of such expense was not incurred by such officer, or that such item was not necessary thereto, such item may be by such auditor or court rejected. In which case the correctness of such item may be adjudicated in any court of competent jurisdiction. The amount of such expense, referred to in this paragraph, shall not be taken to include the salaries of assistants or deputies which are elsewhere herein provided for. The amount of such expense shall be deducted by the officer in making each such report, from the amount, if any, due by him to the county under the provisions of this act. [Chap. 121, Acts 1913; R. S. Art. 3897.]

See notes under Art. 3881.

Whether a typewriter is necessary to the proper discharge of the official duties of a county officer is a question for the commissioners' court and county auditor to decide, or the matter may be adjudicated in a court of competent jurisdiction. Ruling of Attorney General, 1915.

The commissioners' court is not empowered to purchase a library and office fixtures for a county attorney. Ruling of Attorney General, 1914.

792. Certain Officers Not Required to Report Fees or Keep Statements; Proviso as to District Attorney.—The officers named in Articles 3881 to 3886, in those counties having a population of twenty-five thousand inhabitants or less shall not be required to make a report of fees as provided in Article 3895, or to keep the statement provided for in Article 3894; the population of the county to be determined by the last United States census; provided, that all district attorneys shall be required to make the reports and keep the statements required in this chapter. [Chap. 121, Acts 1913; R. S. Art. 3898.]

793. Collector and Assessor to File With Comptroller Copies of Sworn Statements.—The tax collector and tax assessor, at the time of their settlement of accounts with the Comptroller, shall file with him a copy of the sworn statement required under Article 3895. [R. S. Art. 3899.]

794. Officer Recovering Money or Fees Belonging to Another Shall Inform Him and Pay Over on Demand, Etc.—It shall be the duty of every county and precinct officer in the State of Texas who shall, in his official capacity, collect or receive any money or fees belonging to any witness, officer or other person, to inform such person of the collection of such money or fees, and to promptly pay the same over on demand to the person entitled thereto, taking receipt therefor, which shall be entered or noted in the fee book of such officer. [Acts 1907, p. 120; R. S. Art. 3900.]

795. Officers to Report Fees Collected, Etc., Requisites of Report.—On or before the second Mondays in February, May, August, and November of each year, said officers shall make report in writing and under oath to the commissioners' court of their respective counties of all such moneys and fees so collected by them during the quarter last preceding, and remaining in their hands uncalled for, giving the number and the style of each cause in which said moneys or fees accrued, and the name of the person entitled thereto; which report shall be filed with the county clerk of said county, and the same shall be by him kept and preserved for future reference and examination. [R. S. Art. 3901.]

796. Officers to Pay Over Fees, Etc., to Treasurer After Four Years, Etc.; Statements; Disposition.—Every officer collecting or having the custody of any money or fees embraced within the provisions of this and the two preceding articles, at the expiration of four years from the time of collecting or receiving such money or fees, in all cases where the same have not been paid over to the person or persons entitled thereto, shall pay the same to the county treasurer of his respective county, accompanying the same by an

itemized statement, as provided in Article 3901, which statement shall be filed and kept by said treasurer; and said money or fees shall be by him placed to the credit of the road and bridge fund of the county; and the treasurer shall issue to the said officer his receipt for said money or fees, itemizing the same as above provided, which receipt shall be filed by said officer with the county clerk of his respective county; provided, that any officer, upon retiring from office, having any money or fees in his hands embraced within the provisions of this and the two preceding articles, and which are not due to be turned over to the county treasurer as herein provided, shall turn the same over to his successor in office, together with an itemized list of the same as hereinbefore provided, taking proper receipt therefor; and his successor shall report and pay over the same to the county treasurer in accordance with the provisions of this article. [R. S. Art. 3902.]

797. Officer May Appoint Deputies, How; County Judge Not to Influence Appointment, Etc.; Compensation, How Paid.—Whenever any officer named in Articles 3881 to 3886, shall require the service of deputies or assistants in the performance of his duties, he shall apply to the county judge of his county for authority to appoint same; and the county judge shall issue an order authorizing the appointment of such a number of deputies or assistants as in his opinion may be necessary for the efficient performance of the duties of said office. The officer applying for appointment of a deputy or assistant, or deputies or assistants, shall make affidavit that they are necessary for the efficiency of the public service, and the county judge may require, in addition, a statement showing the need of such deputies or assistants; and in no case shall the county judge attempt to influence the appointment of any person as deputy or assistant in any office. Provided, that in all counties having a population in excess of 100,000 inhabitants, the district attorney of any district, or the county attorney of any county where there is no district attorney, is authorized, with the consent of the county judge of the county for which such appointment is intended, to appoint not to exceed two (2) assistants in addition to his regular deputies or assistants, the number of said deputies not to exceed two for the entire district, regardless of the number of counties it may contain, which two assistants shall not be required to possess the qualifications prescribed by law for district or county attorneys, and who shall perform such duties as may be assigned to them by the county attorney of such county, or the district attorney of such district, and who shall receive as their compensation \$100 per month, to be paid in monthly installments out of the county funds, of the

county for which such appointment is made, by warrants drawn on such county funds; and provided, further, that in counties having a population in excess of one hundred thousand inhabitants, the district attorney in the county of his residence or the county attorney where there is not a district attorney, shall be allowed by order of the commissioners' court of the county where such official resides, as in the judgment of the commissioners' court may be necessary, to the proper administration of the duties of such office, not to exceed, however, the sum of \$50 per month. Such amount as may be thus necessarily incurred shall be paid by the commissioners' court upon affidavit made by the district attorney or the county attorney, showing the necessity of such expense and for what same was incurred. The commissioners' court may also require any other evidence as in their opinion may be necessary to show the necessity of such expenditure but they shall be the sole judge as to the necessity for such expenditure and their judgment allowing same shall be final. The maximum amount allowed for deputies or assistants for their services shall be as follows, to-wit:

First assistant or chief deputy, a sum not to exceed a rate of twelve hundred dollars per annum; others not to exceed a rate of nine hundred dollars per annum.

Provided, however, that in counties having a population of 37,500 or over, the maximum salaries allowed for deputies or assistants for their services shall be as follows:

First assistant or chief deputy, a sum not to exceed a rate of eighteen hundred dollars per annum; heads of each department not to exceed the sum of fifteen hundred dollars per annum; others, not to exceed a rate of twelve hundred dollars per annum.

The county judge in issuing his order granting authority to appoint deputies or assistants shall state in such order the number of deputies or assistants authorized and the amount to be paid each; and the amount or compensation allowed shall be paid out of the fees of office to which said deputies or assistants may be appointed, and shall not be included in estimating the maximum salaries of officers named in Articles 3881 to 3886. [Chap. 142, Acts 1913; R. S. Art. 3903.]

NOTE.—The above article was amended by the Act of 1913 in connection with the regular fee bill, which specially provided that the provisions of that Act should take effect Dec. 1, 1914; thereafter, only a few days, the Legislature passed the above amendment to the same article which took effect 90 days after adjournment of the Regular Session.

In certain instances the Governor has the power, under the law, to appoint assistant district attorneys in cities of 50,000 population or more according to the Federal census.

798. Duty of District and County Attorneys to Give Opinion, Etc., to Officers.—The district and county attorney shall give to the assessor of taxes, the collector of taxes, or the treasurer of a county within his district or county, upon request, an opinion in writing touching their duties concerning the revenue of the State or county, and shall also give such advice in writing to the clerk, sheriff or other officer of his district or county as he may deem necessary to insure the prompt collection of all money for which judgments may have been rendered in favor of the State or of a county. [R. S. Art. 356.]

799. Duty of District and County Attorneys to Give Opinion, Etc., to County and Precinct Officers.—The district and county attorneys of this State shall give to all county and precinct officers within his district or county respectively, upon request, an opinion and advice in writing touching their official duties. [Acts 1913, p. 48, Sec. 2; R. S. Art. 356a.]

800. State's Attorney's, With the Consent of Attorney General, to Buy Property.—In any case wherein any property shall be sold by virtue of any execution or order of sale issued upon any judgment in favor of the State except execution issued upon judgments in cases of scire facias, the agent or attorney representing the State, by and with the advice and consent of the Attorney General of the State, is authorized and required to attend such sales, and bid on and buy in for the State said property, when it shall be deemed proper to protect the interest of the State in the collection of such judgment; provided, that in no case shall the amount bid by him exceed the amount necessary to satisfy said judgment and all costs due thereon. [Acts of 1879, p. 9; R. S. Art. 357.]

801. State's Attorneys May Sell Property Bought for State, With Consent of Attorney General.—The agent or attorney of the State, buying for the State any such property at such sale, shall be authorized, by and with the advice and consent of the Attorney General, at any time to sell or otherwise dispose of said property so purchased, in the manner and upon such terms and conditions as he may deem most advantageous to the State; and, if sold or disposed of for a greater amount than is necessary to pay off the amount due upon the judgment and all costs, the remainder shall be paid into the State Treasury and placed to the credit of the general revenue; and, when such sale is made, the Attorney General shall, in the name of the State, execute and deliver to the purchaser a deed of conveyance to said property; which deed, when so

signed by him, shall vest all the right and title to the same in the purchaser thereof. [R. S. Art. 358.]

802. Attorney Representing County May Sell Property of County.—When any such property is sold under execution or order of sale issued upon any judgment in favor of the county, including executions issued upon judgments in cases of scire facias in the name of the State, the attorney or agent so representing the county, by and with the advice and consent of the commissioners' court, shall have the same authority to buy in and dispose of such property for the county as the agent or attorney for the State is given in Article 357 in similar cases; and, when any property is so purchased by the agent or attorney of the county, the officer so selling the same shall execute and deliver to the county a deed of conveyance to the same; and, whenever the property so bought in for the county is sold, the county commissioners' court shall execute and deliver to the purchaser thereof a deed of conveyance in the name of the county to such property. [R. S. Art. 359.]

803. Duty of County Attorney to Give Receipt for Money Collected.—It shall be the duty of a district or county attorney, upon the collection of any money for the use of the State, or of any county, to deliver to the person paying the same a receipt therefor. [Acts 1876, p. 85, Sec. 4; Acts May 13, 1846; P. D. 188; R. S. Art. 360.]

804. Duty of State Comptroller to Prescribe Forms.—He shall prescribe and furnish the forms to be used by all persons in the collection of the public revenue and the mode and manner of keeping and stating their accounts, and shall adopt such regulations, not inconsistent with the Constitution and laws, as he may deem essential to the speedy and proper assessment and collection of the revenues of the State; and all such forms of the same class, kind and purpose shall be uniform in size, arrangement, matter and form. [R. S. Art. 4334.]

805. State Comptroller Shall Keep Ledger for Accounting of Tax Collectors.—The Comptroller shall keep the accounts of tax collectors in a separate ledger, one for current taxes and the other for delinquent and insolvent taxes, and these ledgers shall be made self-balancing by means of controlling accounts. [R. S. Art. 4356.]

806. Per Diem Pay of County Commissioners.—Each county commissioner, and the county judge when acting as such, shall receive from the county treasury, to be paid on the order of the commissioners' court, the sum of three dollars for each day he is engaged in holding a term of the commissioners' court, but such commissioners shall receive no pay for holding more than one

special term of their court per month. [Act Aug. 23, 1876, p. 292, Sec. 14; R. S. Art. 3870.]

As compensation for serving as members of commissioners' court see notes under Art. 3852 pertaining to the fees of the county judge.

The commissioners' court is not authorized to employ a member to perform any service for the county. Ruling of Attorney General, 1907.

A bill attempting to fix the salary of county commissioners at so much per month is unconstitutional. Ruling of Attorney General, 1913.

307. Assessor of Taxes; Compensation.—Each assessor of taxes shall receive the following compensation for his services, which shall be estimated upon the total values of the property assessed, as follows: For assessing the State and county tax, on all sums for the first two million dollars or less, five cents for each one hundred dollars of property assessed; and on all sums in excess of two million dollars and less than five million dollars, two and one-fourth cents on each one hundred dollars; and on all sums in excess of five million dollars, one and seven-tenths cents on each one hundred dollars; one-half of the above fees shall be paid by the State, and one-half by the county; and for assessing the poll tax five cents for each poll, which shall be paid by the State. The commissioners' court may allow to the assessor of taxes such sums of money, to be paid monthly from the county treasury, as may be necessary to pay for clerical work, taking assessments and making out the tax rolls of the county, such sums so allowed to be deducted from the amount allowed to the assessor as compensation upon the completion of said tax rolls; provided, the amount allowed the assessor by the commissioners' court shall not exceed the compensation that may be due by the county to him for assessing. [Acts 1897, S. S., p. 8, Sec. 8; R. S. Art. 3871.]

See Art. 7583.

Where the assessor brings up a list of poll taxes on the unrendered roll the commissioners' court is not authorized to pay him the 5 cent provided for as compensation. He is only entitled to compensation for the poll taxes actually assessed in person. Opinion of Attorney General, Nov. 7, 1913.

On order of the county commissioners' court approving a tax roll the determination as to assessor's compensation could not be attacked in a suit by him against the county to recover the amount due. *Dimmit County v. Cavender*, 65 S. W. 881.

The order of the commissioners' court approving the assessment rolls is tantamount to an adjudication of the amount the assessor is entitled to receive as compensation. (*Id.*), 65 S. W. 881.

Commissioners' court must pay what may be due tax assessor for work done. Ruling of Attorney General, 1912-14.

Commissions allowed tax assessors for assessing property both in drainage districts and school districts must be included like other fees of office. Ruling of Attorney General, 1912-14.

Tax assessor is entitled to one-half of 1 per cent for assessing taxes for road district, payment to be made out of funds collected to provide interest and sinking fund for bonds of the district. Ruling of Attorney General, 1912-14.

Tax assessor is entitled to 5 cents for every poll tax assessed by him and this sum must be paid by the State. Ruling of Attorney General, 1912-14.

If tax assessor does not appoint his wife to a position in his office and she assists him without receiving any pay or compensation, directly or indirectly, from public funds or fees of office, it would not be a violation of the law. Ruling of Attorney General, 1912-14.

Nueces county assessor entitled to assess taxes of Kleberg County, a newly created county of Nueces County, but his commission should be figured on combined assessment of the two counties. Ruling of Attorney General, 1912-14.

808. Collector of Taxes; Compensation.—There shall be paid for the collection of taxes, as compensation for the services of the collector, beginning with the first day of September of each year, five per cent on the first ten thousand dollars collected for the State, and four per cent on the next ten thousand dollars collected for the State, and one per cent on all collected over that sum; for collecting the county taxes, five per cent on the first five thousand dollars of taxes collected, and four per cent on the next five thousand dollars collected, and one and one-fourth per cent on all such taxes collected over that sum; and, in counties owing subsidies to railroads, the collectors shall receive only one per cent for collecting such railroad tax; and, in cases where property is levied upon and sold for taxes, he shall receive the same compensation as allowed by law to sheriffs or constables upon making a levy and sale in similar cases, but in no case to include commissions on such sales; and, on all occupation and license taxes collected, five per cent. [Acts 1897, S. S., p. 8, Sec. 9; R. S. Art. 3872.]

County tax collectors are entitled to the same compensation for selling property for taxes as sheriffs get for execution sales. *Eustis v. Henrietta*, 91 Tex. 325, 43 S. W. 259.

Tax collectors are entitled to 15 cents for issuing each poll tax receipt and certificate of exemption, regardless of the vote cast at the last preceding Presidential election. Opinion of Attorney General.

Under Section 144 of the election law passed by the Twenty-ninth Legislature, the fees of tax collectors for issuing poll tax receipts and certificates of exemption are payable, six-sevenths by the State and one-seventh by the county. Ruling of Comptroller.

809. County Treasurer; Commissions.—The county treasurer shall receive commissions on the moneys received and paid out by him, said commissions to be fixed by order of the commissioners' court as follows: For receiving all moneys, other than school funds, for the county, not exceeding two and one-half per cent, and not exceeding two and one-half per cent for paying out the same; provided, however, he shall receive no commissions for receiving money from his predecessor nor for paying over money to his successor in office. [R. S. Art. 3873.]

Under Constitution, Art. 16, Sec. 44, giving county treasurers such compensation as may be provided by law, and under this article, the amount of commission is discretionary with that court; but it cannot validly provide that he shall receive no compensation, and, on such order being made, the treasurer is entitled to the commission fixed by a previous order. *Hill County v. Sauls*, 134 S. W. 267.

When commissions are not fixed by order of the court, the treasurer is entitled to the maximum fees. *Bastrop County v. Hearne*, 70 Tex. 563, 8 S. W. 302.

If the county treasurer holds more than a year before his successor qualifies, he is entitled to pay at the same ratio for the time he holds. *Deavenport v. Eastland*, 94 Tex. 277, 60 S. W. 244.

Under this article, courts cannot interfere with an order fixing the commission at $1\frac{1}{2}$ mills on the dollar. *Hill County v. Sauls*, 134 S. W. 267.

Evidence in an action against a county by its ex-treasurer for commissions on the theory that the county borrowed money of a bank and therewith paid a judgment against the county, held sufficient to sustain a finding that the transaction was but a purchase by the bank of the judgment. *Benefield v. Marion County*, 95 S. W. 713.

Commissioners' court can reduce commissions of county treasurer during his term of office. Ruling of Attorney General, 1912-14.

The fees of the county treasurer are limited to \$2000 per year. Ruling of Attorney General, 1912-1914.

Funds collected by virtue of the county depository law must be deposited by treasurer in the depository as county funds. Ruling of the Attorney General, 1912-14.

Commissioners' court has authority to fix compensation of county treasurer at not to exceed $2\frac{1}{2}$ per cent for receiving and $2\frac{1}{2}$ per cent for paying out money. Ruling of Attorney General, 1912-14.

Commissions received by county treasurer upon road and bridge bonds shall form a part of the limit of \$2000 allowed by law. Ruling of Attorney General, 1912-14.

County treasurer shall receive as compensation 1 per cent upon all money received and disbursed by him belonging to drainage district, but his commission as county treasurer cannot exceed the maximum fees prescribed. Ruling of Attorney General, 1912-14.

The only legal way in which a county treasurer may be compensated for his services is by payment to him of commissions on moneys received and paid out by him, and the commissioners' court would not have the authority to pay the county treasurer a salary for the services rendered

by him, because by the terms of the statute his compensation must come from the commissions on moneys received and paid out by him. Ruling of Attorney General, 1912-1914.

Commissions received by county treasurer upon road and bridge bonds shall form part of the maximum allowed by the statute. Ruling of Attorney General, 1912-14.

The commissioners' court can not abolish the office of county treasurer, nor can they by indirection accomplish this result by denying to the incumbent of that office any compensation, or by allowing him merely a nominal compensation so as to make it impossible to secure an efficient officer to discharge the duties imposed upon the county treasurer. Ruling of Attorney General, 1906-08.

810. County Treasurer's Commissions on School Fund.—The treasurers of the several counties shall be treasurers of the available public free school fund and also of the permanent county school fund for their respective counties. The treasurers of the several counties shall be allowed for receiving and disbursing the school funds one-half of one per cent for receiving, and one-half of one per cent for disbursing, said commissions to be paid out of the available school fund of the county; provided, no commissions shall be paid for receiving the balance transmitted to him by his predecessor, or for turning over the balance in his hands to his successor; and provided, further, that he shall receive no commissions on money transferred. [Acts of 1891, p. 147; R. S. Art. 3874.]

811. Commissions Shall Not Exceed \$2,000 Annually.—The commissions allowed to any county treasurer shall not exceed two thousand dollars annually. [Acts of 1879, Chap. 69, p. 79; R. S. Art. 3875.]

If a county illegally withholds money belonging to a county treasurer, he can recover interest thereon as damages. *Presidio County v. Walker*, 69 S. W. 97.

The county treasurer is not entitled to commissions on county scrip delivered for cancellation (84 Tex. 12), or received in payment of ad valorem taxes (*Id.*), or received by him from the tax collector and reported for cancellation. *McKinney v. Robinson*, 84 Tex. 489; *Baylor County v. Taylor*, 22 S. W. 983.

The county treasurer is entitled to only \$2,000 per annum to be paid out of the fees fixed by the commissioners' court, if such fees should amount to that much. *Deavenport v. Eastland*, 60 S. W. 244.

The county treasurer is entitled to the custody of all county funds and the commissions thereon. *Wall v. McConnell*, 65 Tex. 397, *Trinity County v. Vickery*, 65 Tex. 554.

A county treasurer is not entitled to fees for making the reports required by Articles 1437 and 1446 of the Revised Statutes. *Wharton County v. Ahldag*, 84 Tex. 12, 19 S. W. 291.

No distinction can be made between general and special funds belonging

to the county, and no authority exists in a commissioners' court to deprive the treasurer of the right to his commissions for receiving and paying out county funds by directing their receipt and disbursement by any other person. In such case a right of action in favor of the treasurer exists to recover the amount allowed by law for receiving and paying out the money. *Bastrop County v. Hearn*, 70 Tex. 563, 8 S. W. 302.

A county treasurer is not entitled to commissions on county bonds delivered to a contractor and which had never been sold. *Baylor County v. Taylor*, 22 S. W. 983.

A treasurer of a county cannot be deprived of his statutory fees by delivery of bonds to a contractor. *Waller County v. Rankin*, 35 S. W. 876.

A county treasurer is not entitled to commissions on bonds surrendered by the owner in lieu of new ones issued to him. *Farmer v. Aransas County*, 53 S. W. 607.

Money realized from sale of bonds held to belong to the county so as to entitle its treasurer to commissions thereon. *Presidio County v. Walker*, 69 S. W. 97.

If county treasurer dies after having served nine months and his successor is appointed to fill the unexpired term the estate of the deceased treasurer would be entitled to only \$1500, although the commissions allowed by law during the life of the treasurer amounted to \$2,000, and the treasurer should be entitled to \$500 for serving the balance of the fiscal year. *Ruling of Attorney General*, 1912-14.

All moneys, bonds, etc., of a drainage district should be in keeping of the county treasurer. *Ruling of Attorney General*, 1912-14.

Commissioners' court has no authority to fix a monthly salary as compensation for the county treasurer. *Ruling of Attorney General*, 1912-14.

Commissioners' court can fix the commissions of county treasurer at any amount not to exceed the maximum allowed by law. *Ruling of Attorney General*, 1912-14.

812. Tax Collector's Fees and How Paid.—The collector of taxes shall be paid fifteen cents for each poll tax receipt and certificate of exemption issued by him, to be paid pro rata by the State and county in proportion to the amount of poll tax received by each; and this shall include his compensation for administering oaths, furnishing certified lists of qualified voters in election precincts for use in all general elections and primary conventions, when desired, and for all duties required of him under this title; provided, that collectors, whose salaries are fixed by what is known as the fee bill, shall receive ten cents for each poll tax receipt and certificate of exemption issued by him; and such fees shall be ex officio and not accountable under said fee bill. [Acts 1905, 1st S. S., Sec. 144; R. S. Art. 2986.]

If a county has a population of over 15,000, the collector would be entitled to receive 10 cents for each poll tax receipt and certificate of exemption issued by him and such fees shall be ex officio and not accountable under the fee bill. It was the intention on the part of the Legislature

to pay all collectors in counties over 15,000 population the sum of 10 cents on each poll tax receipt and certificate of exemption issued by him, and those in counties under 15,000 the sum of 15 cents for this service. Ruling of Attorney General, 1915.

The commissioners' court has no power to compel tax collector to pay over State tax money to county treasurer. Ruling of Attorney General, 1912-14.

Duty of tax collector at time he makes deposit with county depository to submit an itemized statement showing the amount deposited to each fund, including common school districts. Ruling of Attorney General, 1912-14.

Law prohibits tax collector from issuing tax receipts to any person after January 31, even though money for payment of said tax was received by him prior to midnight of January 31. Ruling of Attorney General, 1912-14.

Tax collector may assess unrendered personal property for more than two years back. Ruling of Attorney General, 1912-14.

Tax collector is not authorized to issue poll tax receipt to any person or his agent where such person has not been legally assessed and refuses to be assessed, either in person or through his agent. Ruling of Attorney General, 1912-14.

Tax collector is prohibited by law from delivering tax receipts to agent of taxpayer. Ruling of Attorney General, 1912-14.

Tax collector is required to make monthly report in payment of both State and county tax money. Ruling of Attorney General, 1912-14.

The statute requiring tax collector's bond should be approved within twenty days is directory. Ruling of Attorney General, 1912-14.

The tax collector and county clerk are entitled to \$1 for performing services required of them with reference to compilation of delinquent tax record. Tax collector alone is entitled to \$1 for preparing and filing of delinquent tax list. Ruling of Attorney General, 1912-14.

Where county tax collector also collects for school district it would be his duty to demand full payment of taxes, district, county, and State. Ruling of Attorney General, 1912-14.

Where property is sold for taxes and bid in by the State, the fees and costs are not to be advanced by the State in the first instance. If the property is redeemed by the owner, unpaid fees and costs are included in the redemption price and held by the State for the collector. *Dean v. State*, 54 Tex. 313, *Ramsey v. State*, 78 Tex. 604, 14 S. W. 793.

Upon redemption, the sheriff is only entitled to his costs, not to interest, or double costs and fees. *Ramsey v. State*, 78 Tex. 604, 14 S. W. 793.

The fees allowed officers under Article 5232i can be charged for each year that the taxes are delinquent. *State v. Wolfe*, 51 S. W. 657.

813. Compensation for Assessment and Collection of Special School Taxes.—In an independent school district constituted of a city or town having a city assessor and collector of taxes, such assessor and collector of taxes shall assess and collect the taxes for school purposes; provided, that in a city or town having an assessor and collector of taxes, the levy of taxes for school purposes

shall be based upon the same assessment of property upon which the levy for other city purposes is based. It is further provided, that, in such a city or town, the assessor and collector of taxes shall receive no other compensation for collecting school taxes than the compensation paid him for assessing and collecting city taxes; and taxes for school purposes in such a city or town shall be assessed and collected as other city taxes are assessed and collected. [R. S. Art. 2881.]

School Law, Sec 57 (Art. 2827), held to control Section 165 (Arts. 2862, 2881, 2891). *Gulf, C. & S. F. Ry. Co. v. Blum Independent School Dist.* (Civ. App.), 143 S. W. 353.

Under Article 2827, which authorizes the levying of a special tax for school purposes, with the proviso "that in all assessments of property for taxing purposes * * * the property shall be assessed at the valuation fixed for said property for State and county purposes," as amended, and this article, held, that the amendment of the act did not remove the right to have the valuation of property limited to that fixed for county and State purposes where the assessment was made by the county assessor. *Underwood v. Childress Independent School Dist.* (Civ. App.), 149 S. W. 773.

814. List of Voters Furnished, to Be Used in Primary, Etc.—The county tax collector shall deliver to the chairman of the county executive committee of each political party, for its use in primary elections, at least five days before election day, certified lists of the qualified voters of each precinct in the county, arranged alphabetically and by precincts, who have paid their poll tax or received certificates of exemption; and it shall be the duty of such chairman to place the same in the hands of the election officers of each election precinct before the polls are open; and no primary election shall be legal, unless such list is obtained and used for reference during the election. For each list of all the qualified voters of the county who have paid their poll taxes and received their certificates of exemption, the collector shall be permitted to charge not more than five dollars, the same to be paid by the party or its chairman so ordering said lists; provided, that the charge of five dollars shall be in full for the certified lists of all the voters of the county arranged by precincts, as above provided. [R. S. Art. 3116.]

815. Duty of Collector to Furnish Lists.—It shall be the duty of the tax collector of each county, upon application by the county chairman of the various political parties, to furnish to the presiding judges of the election in the several precincts certified copies of the list of qualified voters of the several precincts, which said copies shall be furnished at least four days prior to said primary election. [R. S. Art. 3117.]

816. What Officers Entitled to Receive Copies of Laws.—The following officers shall be entitled to receive one copy of each of all general and special laws hereafter passed by the Legislature, to-wit: The Governor and heads of departments, each member of the Legislature, the judges of the several courts throughout the State, and the clerks of said courts, and each county attorney. The following officers shall be entitled to receive one copy each of all general laws hereafter passed by the Legislature, to-wit: County treasurer, county surveyor, sheriff, assessor of taxes, collector of taxes, inspector of hides and animals, justice of the peace, constable and county commissioner. [Acts 1885, p. 68; R. S. Art. 4310.]

817. How Printed Laws Shall Be Distributed.—The Secretary of State shall distribute the printed laws of each session of the Legislature to the officers named in the preceding article, as follows: He shall mail or deliver in person to the Governor and heads of departments, and to all State or district officers, a copy each, as therein provided; and he shall forward to the county judge of each county a sufficient number of said laws to supply each county officer named in the preceding article with a copy. [Act Feb. 2, 1850, p. 99, Sec. 3; P. D. 4585; R. S. Art. 4311.]

818. Certain Allowance to Tax Collector.—He shall remit, or make an allowance, to every tax collector in the auditing of his accounts, for all sums of money, which, in his judgment, have been illegally assessed. [R. S. Art. 4335.]

819. Certain Manufacturers Required to Pay Registry Fees to Pure Food Department.—All manufacturers of foods and drugs doing business in the State of Texas, or all such persons as shall bring into and offer for sale within the State any article of food or drug, shall annually register their firm names and addresses with the Dairy and Food Commissioner and shall pay to said commissioner a fee of \$1.00 for such registration on or before the first day of September of each year. Such fees shall be turned over by the commissioner to the State Treasurer and set apart as a fund to be known as "The Pure Food Fund," which fund, or as much thereof as may be necessary, may, with the advice and consent of the Governor, be used by the commissioner for paying the expenses of the Dairy and Food Department. The amounts for such expenses shall be audited by the Comptroller upon his warrant drawn upon the State Treasury. [Acts 1911, p. 76, Sec. 23; Art. 4585b, Vernon Sayles' R. S.]

Holding that ice is food; that branch houses are liable to one dollar tax, as well as the principal house; meat markets who manufacture lard compound are manufacturers. Ruling of Attorney General, p. 826, 1914-16.

We advise you that it is the opinion of this department that inasmuch as it is within the common knowledge of everybody that ice enters into and is a part of so many things that we eat and drink, that in the contemplation of this law, which is aimed to secure purity of all things we eat and drink, ice is to be treated as a food and it is your duty to take all steps that are necessary to see that it is pure and that no injurious substance enters into its manufacture. Ruling of Attorney General, p. 826, 1914-16.

Your next inquiry is as to whether or not manufacturers of ice are such manufacturers as Section 23 levies a tax upon, and the only question involved here is as to whether or not persons who manufacture ice are manufacturers of food. If so, are they liable to the tax? We advise you that we think that all companies who manufacture ice are liable to the tax levied in Section 23. Ruling of Attorney General, p. 826, 1914-16.

We are of the opinion that ice manufacturers are manufacturers of a food product, and are therefore liable for a fee of one dollar, to be paid to the Commissioner, as provided for in Section 23. Ruling of Attorney General, p. 826, 1914-16.

Your second proposition is to be advised if a branch house or branch houses are subject each to the fee of one dollar provided for in Section 23. We advise you that we are of the opinion that each branch house who is a manufacturer of food and drugs doing business in the State of Texas, or all such persons as shall bring into and offer for sale within the State any article of food or drug, are liable to the one dollar fee. Ruling of Attorney General, p. 827, 1914-16.

820. Data to Be Furnished Commissioner of Agriculture by Tax Assessor.—He shall collect and publish statistics and such other information regarding such industries of this State and of other States as may be considered of benefit in developing the agricultural resources of this State. He shall cause a proper collection of agricultural statistics to be made annually; and, to this end, he shall furnish blank forms to the tax assessors of each county before the first of January of each year, including forms as to the acreage in cotton, grain and other leading products of the State, to be filled out by persons assessed for taxes, together with such instructions as will properly direct said assessor in filling them out. It is hereby made the duty of said tax assessor to return said blanks, with accurate answers, to the Commissioner of Agriculture on or before the first day of June following. It is further made the special duty of the said tax assessor to forward by registered mail to the Commissioner of Agriculture lists of the names and addresses of all ginners within their counties when asked to do so by the commissioner. It shall be the duty of the commissioner to furnish to every ginner blank forms for reports, which forms shall be filled out by said ginners as the commissioner may direct, and returned by them to the commissioner. In order to facilitate the collection and colla-

tion of accurate information concerning the various subjects treated of in this chapter, the heads of the several State departments, and of the State institutions, are hereby required to furnish accurately such information as may be at their command whenever called upon for same by said commissioner. In the prosecution of his work, the commissioner is hereby empowered to enter manufacturing establishments chartered or authorized to do business in this State, and said corporations shall furnish such information as said commissioner may request of them. [Sec. 11 of Art. 4443, Acts 1907.]

821. Comptroller Required to Keep Revenue Ledger.—The Comptroller shall keep a ledger, to be known as "revenue ledger," in which a distribution shall be made of the revenues derived by the State from all sources, and the amount derived from each source, as stated. The sources of revenue printed on the back of the duplicate in each deposit warrant issued therefor by the Comptroller shall be posted to the revenue ledger, and its balances periodically agreed with the deposit warrants issued. [R. S. Art. 4355.]

822. Fees That May Be Charged by Pharmacy Board.—The State Board of Pharmacy shall be entitled to charge and collect the following fees: For the examination of an applicant for license to practice pharmacy, ten dollars (\$10.00); for the examination of an applicant as an assistant pharmacist, five dollars (\$5.00); for the renewal of a license, one dollar (\$1.00); said fee for the renewal shall be paid on or before the first day of January of each year. For issuing duplicate certificates of renewal cards, one dollar (\$1.00); for issuing license to any proprietor or employee to conduct a drug store in towns of not more than one thousand inhabitants, one dollar (\$1.00); for reciprocal exchanges of certificates with other States, twenty-five dollars (\$25.00); for life member certificates, twenty-five dollars (\$25.00).

All fees shall be paid before any applicant shall be admitted to an examination or his or her name to be placed upon the register as a pharmacist, or before the license, duplicate, or renewal, or life membership can be issued. [Acts 1917, p. 327; R. S. Art. 6292.]

NOTE.—Regardless of Sec. 792, page 506, the fee bill applies to all counties regardless of population, according to ruling of the Attorney General.

CHAPTER XXVIII.

GENERAL PROVISIONS RELATING TO COUNTY FINANCES, FUNDS, ETC.

(From Chapter 1, Title 29, R. S.)

	Sec.		Sec.
Duty of Commissioners' Court to Procure Ledger, etc.....	823	Duty of the District Attorney to Make Report, etc.....	846
Duty of County Clerk to Keep Accounts	824	Duty of the County Attorney to Make Report	847
Duty of County Clerk to Balance Each Account	825	Judgment Not Collectible May Be Sold	848
Duty of County Clerk to Publish Report	826	Any Officer Collecting Money for the County Shall Report Same	849
Compensation of Clerk for Keeping Ledger	827	Money Collected by Officer Shall Be Charged to Him, etc.....	850
Accounts Shall Be Opened How, and Shall Be Indexed.....	828	Estray Account Shall Be Kept in Ledger	851
Account Shall Be Kept With the Tax Collector	829	Duty of County Clerk When Receipt of Estray Money is Presented	852
Receipt of Collector for Tax Rolls	830	Clerk Shall Keep Account With County Treasurer	853
How the Collector May Discharge His Indebtedness.....	831	County Treasurer Shall Register Claims Against the County.....	854
Collector Shall Make Separate Lists of Indigent and Delinquent Taxpayers, etc.	832	How Claims Against the County Shall Be Classified	855
No Credit Shall Be Entered for Delinquent Taxes Until Allowed by the Court.....	833	Manner of Registering Claims Against the County.....	856
Taxes for Each Year Shall Be Kept Separate	834	What Shall Be Written on Registered Claim	857
Tax Collector Going Out of Office Shall Give Tax Rolls to Successor	835	Claims Shall Be Numbered, in What Order	858
Tax Collector Shall Collect Occupation Tax, and Receipt for Same	836	Order in Which Claims Shall Be Paid	859
County Clerk Shall Issue Occupation License, When	837	Classification of County Funds Received by County Treasurer..	860
County Clerk Shall Make Two Reports of Licenses Issued at End of Each Month.....	838	Commissioners' Court May Create Other Classes of Funds, etc.	861
What the Reports of County Clerk Shall State, etc.....	839	Said Court May Transfer One Class of Funds to Another, Except	862
County Clerk Shall Keep Occupation Tax Account With Collector	840	County Treasurer Shall Report Registered Claims Each Month	863
County Clerk Shall Keep Account With Sheriff.....	841	Clerk Shall Enter Report Upon Ledger, etc.	864
How Sheriff May Free Himself from Liability Under Preceding Article	842	Party Receiving Payment of Claim Shall Receipt Thereon....	865
Duty of Clerks to Report Fines, Judgments and Jury Fees Monthly	843	Officer Receiving Claim in Payment of Debt to County Shall Report List of Same.....	866
What the Reports of County Officers Shall Show.....	844	Claims Received by Other Officer Than County Treasurer Shall Be Reported to County Treasurer	867
Fines Imposed and Judgments Rendered by Justices Shall Be Charged Against Them, etc....	845	Duty of the County Treasurer to Keep Accounts, etc.....	868

	SEC.		SEC.
Claim Shall Be Canceled, When and How	869	Reports and Vouchers Shall Be Filed and Preserved in County Clerk's Office	874
Report of Treasurer, Order Approving; to Recite What; Credit	870	District Judge Shall Appoint Committee to Examine Into the Finances of County.....	875
Commissioners to Inspect and Count Cash, etc., in Hands of Treasurer, etc.	871	Duty of Such Committee in Conducting Examination	876
Affidavit of Compliance, etc.; Filing, Record and Publication of, etc.	872	Report of Committee, and What It Shall Set Forth.....	877
Commissioners' Court Shall Examine and Correct All Accounts and Reports, etc.....	873	Compensation of Committeemen Appointed by District Judge.....	878
		All Reports Made by County Officers Shall Be Sworn to.....	879
		When and Where Monthly Reports Shall Be Filed.....	880

823. Duty of Commissioners' Court to Procure Ledger, Etc.—

The several county commissioners' courts shall each procure a well-bound ledger and index, and shall cause to be entered in said book a full, complete and orderly statement of the condition of the finances of the county. [R. S. Art. 1401.]

824. Duty of County Clerk to Keep Accounts.—It is hereby made the duty of the clerk of the county court to open and keep in said book, which shall be known as a finance ledger, an account with each and every officer of the county, district, or State, who is now, or may hereafter be authorized or required by law to receive or collect any money or other property for the use of, or belonging to, the county. The clerk shall also keep such other accounts as may be necessary to carry out the purposes of this title; that all items shall be entered daily under their respective heads, and said finance ledger shall be at all times subject to the inspection of the public. [R. S. Art. 1402.]

Cited, *Hall v. Bell County* (Civ. App.), 138 S. W. 178.

825. Duty of County Clerk to Balance Each Account.—It shall be the duty of the said clerk to balance each account so kept, and make a tabular statement, under oath, at each regular term of the commissioners' court for the three months next preceding the month when such court meets in regular session, to be presented to said court during the second day of its term, specifying therein the names of the creditors of said county, and the items of indebtedness, with their respective dates of accrual, and also the names of persons to whom moneys have been paid, with the amounts paid each; the names of persons from whom moneys have been received, with the date of receipt, and for what amount received, during the quarter for which such statement is prepared; said statement shall also show the amount to the credit or debit of each fund separately. [R. S. Art. 1403.]

826. Duty of County Clerk to Publish Report.—It shall be the duty of said clerk, immediately after the first regular term of the commissioners' court in each year, to publish for one time in some weekly newspaper published in his county (or if there be no paper published therein, then by posting four copies of such exhibit, one in each commissioners' precinct, one of which shall be at the court house door, the other three at public places in such precincts), an exhibit showing the aggregate amount received and the aggregate amount paid out of each fund for the four preceding quarters, and the balance to the credit or debit of each fund; also the amount of indebtedness of said county, with their respective dates of accrual, and to whom and for what due; also the amount to the debit or credit of each officer or other persons with whom an account is kept. The cost for publishing the same shall be paid by order of the commissioners' court out of the general fund of the county. [R. S. Art. 1404.]

827. Compensation of Clerk for Keeping Ledger, Etc.—The clerk shall receive annually as compensation for the labor performed in keeping the finance ledger as provided for in Article 1402, and making the quarterly statement as provided for in Article 1403, the sum of five dollars for each one thousand dollars tax assessed as due the county, to be paid quarterly on order of the commissioners' court out of the general fund of the county; provided, the same be not less than one hundred nor more than two hundred and fifty dollars per annum. [R. S. Art. 1405.]

828. Accounts Shall Be Opened How, and Shall Be Indexed.—Said accounts shall be opened by stating at the top of the page the name of the officer and his office; and all of said accounts shall be properly indexed for convenient reference. [R. S. Art. 1406.]

829. Account Shall Be Kept With the Tax Collector.—The accounts of the tax collector shall be kept as follows: A separate account shall be kept for each separate fund that may be upon the tax rolls; each account shall state the name of the collector, the character of the fund entered therein, and the year for which the same is assessed. [R. S. Art. 1407.]

830. Receipt of Collector for Tax Rolls.—Whenever the tax rolls are ready for delivery to the tax collector, the court or officer having control of the same shall take from the collector a written receipt for the same, specifying the amount therein assessed and due the county, stating separately the amount assessed to each fund, and shall deliver said receipt to the clerk of the county court, who shall charge the collector with the amount stated in said receipt in the proper account; and said amounts shall be treated as debts due the county by the collector. [R. S. Art. 1408.]

831. How the Collector May Discharge His Indebtedness.—The collector shall discharge said indebtedness within the time prescribed by law, by filing with said clerk receipts for the same, as follows: (1) The commission due the collector. (2) The assessor's receipt for commissions due such assessor, if any are to be paid by the county. (3) Proper vouchers for such payments as he is now, or may hereafter be required to pay out of any money on hand. (4) The receipt of the county treasurer for the money paid into the treasury. [R. S. Art. 1409.]

832. Collector Shall Make Separate Lists of Indigent and Delinquent Taxpayers, Etc.—The collector shall make separate lists of the indigent and delinquent taxpayers, showing their names, and the amount due by each taxpayer; and the court shall carefully examine said indigent and delinquent list, and shall make an order and enter the same upon the minutes of the court, stating the names and amounts that are adjudged uncollectible; and the collector shall have credit for the amounts included in said order in the proper amounts. [R. S. Art. 1410.]

833. No Credit Shall Be Entered for Delinquent Taxes Until Allowed by the Court.—No credit for indigent or delinquent taxes shall be entered in said collector's accounts until an order of the court has been made and entered allowing the same. [R. S. Art. 1411.]

834. Taxes for Each Year Shall Be Kept Separate.—In keeping accounts with the collector, the taxes assessed for each year shall be kept separate and distinct. [R. S. Art. 1412.]

835. Tax Collector Going Out of Office Shall Deliver Tax Rolls to Successor, Etc.—Whenever a tax collector shall go out of office, he shall deliver to his successor the tax rolls in his possession, and shall receive from his successor a receipt in writing for the amount of taxes due on the tax rolls so delivered, specifying the amount of each fund and each year separately, and also the amount due on the indigent and delinquent list; which receipts he shall deliver to the clerk of the county court, who shall enter them to the credit of the collector presenting them, to the extent that the same are allowed by the court as hereinbefore provided, and shall charge the amounts so credited to the successor in office of such collector, in the proper accounts. [R. S. Art. 1413.]

836. Collector Shall Collect Occupation Tax, and Receipt for Same.—All occupation taxes due the county shall be collected by the tax collector of the county without assessment, and the collector shall give to the party paying the tax a receipt in writing, stating the name of the person paying the same, the occupation paid for,

the time such occupation is to be pursued, and the amount collected for the State and for the county. [R. S. Art. 1414.]

837. County Clerk Shall Issue Occupation License, When.—Upon the presentation of the receipts provided for in the preceding article to the clerk of the county court of the county in which such tax has been paid, such clerk shall issue a license in the name of the State or county, or both, in accordance with the tax paid, to the person paying such tax, authorizing him to pursue the occupation named in such receipt during the time for which he has paid the tax. [R. S. Art. 1415.]

838. County Clerk Shall Make Two Reports of Licenses Issued at End of Each Month.—Said clerk shall, at the end of every month, make two reports in writing, one of licenses issued on taxes paid to the State, which he shall forward to the Comptroller of Public Accounts, by mail; the other of licenses issued on taxes paid to the county, and file the same in his office. [R. S. Art. 1416.]

839. What the Reports of County Clerk Shall State, Etc.—The reports required by the preceding article shall state the name of the licensee, the occupation, the time for which the license is issued and the amount of taxes paid therefor, and shall be dated and signed officially by such clerk and attested by his seal of office. [R. S. Art. 1417.]

840. County Clerk Shall Keep Occupation Tax Account With Collector.—The clerk shall keep an occupation tax account with the collector of the county, in which he shall charge the collector with all licenses issued for the county; and the collector shall have credit in said account for his commissions, and the amount paid into the treasury upon filing the proper receipt of the county treasurer with such clerk. [R. S. Art. 1418.]

841. County Clerk Shall Keep Account With Sheriff.—An account shall be kept by the clerk with the sheriff of each county in which such sheriff shall be charged with all judgments, fines, forfeitures and penalties, payable to the county, rendered in the district or county courts of the county, or any other court of his county, and with the collection of which he is, by law, made chargeable. [R. S. Art. 1419.]

842. How Sheriff May Free Himself From Liability Under Preceding Article.—The sheriff may free himself from liability from the charge required in the preceding article by—

1. Producing the receipt of the county treasurer showing the payment of such judgment, fine, forfeiture or penalty.
2. By showing to the satisfaction of the commissioners' court that the same cannot be collected, or that the same has been discharged by imprisonment or labor, or by escape, without his fault or neg-

lect; and none of the credits herein provided for, except those on the receipts of the treasurer, shall be entered without an order of the commissioners' court allowing the same. [R. S. Art. 1420.]

843. Duty of Clerks to Report Fines, Judgments and Jury Fees Monthly.—Clerks of the district and county courts, county judges, county treasurers, sheriffs, district and county attorneys, constables and justices of the peace, who shall collect or handle any money for the use of the county, shall make a full and complete report, under oath, in writing, to the commissioners' court, at each regular term thereof, of all fines imposed and collected and all judgments rendered and collected for the use of the county, and all jury fees collected in their respective courts in favor of, or for the use of, the county; and at the same time to present their receipts and vouchers showing what disposition has been made of the money collected, fines imposed and judgments rendered; which reports, receipts and vouchers shall be carefully examined by the said commissioners' court, and, if found to be correct, shall cause the clerk to enter the same on the financial ledger, and, if found to be incorrect, shall summon said officer before them, and have the same corrected; and said reports, receipts and vouchers shall be filed in the county clerk's office. [R. S. Art. 1421.]

Cited, *Hall v. Bell County* (Civ. App.), 138 S. W. 178.

844. What the Reports of County Officers Shall Show.—The reports required by the preceding article shall state fully—

1. The name of the party fined and the amount of the fine, or the name of the party against whom judgment was rendered and the amount of such judgment, as the case may be.

2. The style and number of the cases in which fines have been imposed or judgments rendered, and the date thereof.

3. The amount of jury fees collected, and the style and number of the case in which each jury fee was collected and from whom collected. [R. S. Art. 1423.]

845. Fines Imposed and Judgments Rendered by Justices Shall Be Charged Against Them, Etc.—Fines imposed and judgments rendered by justices of the peace shall be charged against the justice of the peace imposing or rendering the same; and he may discharge said indebtedness by filing with the clerk of the county court the treasurer's receipt for the amount thereof, or by showing to the satisfaction of the commissioners' court that he has used due diligence to collect the same without avail, or that the same have been satisfied by imprisonment or labor. [R. S. Art. 1423.]

846. Duty of the District Attorney to Make Report, Etc.—The district attorney of each district shall, at each term of the district

court for each county in his district, make a report in writing, to the clerk of the county court, of all moneys received by him since the last term of the district court for such county, for the use of such county. [R. S. Art. 1424.]

847. Duty of the County Attorney to Make Report.—The county attorney of each county in the State shall make a similar report to the one required in the preceding article to the clerk of the county court of his county, at the end of each month. [R. S. Art. 1425.]

848. Judgment Not Collectible May Be Sold.—Whenever the principal and sureties upon any judgment, the proceeds of which revert to, and belong to, any county, are insolvent so that under any existing process of law said judgment or any part thereof can not be collected, the commissioners' court of said county are hereby constituted a board to dispose of such judgment, and are hereby empowered and authorized, by such advertising as they may deem necessary, to offer for sale, as they may deem to be the best interests of the county, all the right of the county to such judgment. And, if by public sale, if the amount bid on the same shall not be deemed sufficient, they shall refuse to accept the same, and dispose of the same in any manner deemed by them most advantageous to the interest of the county, and, upon sale, shall make a proper assignment of said judgment to the purchaser. [R. S. Art. 1426.]

This article is not in contravention of Section 55, Article 3, of the Constitution, prohibiting the Legislature from authorizing a release or relinquishment of an obligation due a county. *Lindsey v. State*, 96 Tex. 586, 74 S. W. 751.

The commissioners cannot compromise with, nor sell to judgment debtor either directly or indirectly a judgment in favor of the county obtained on a bail bond. *Lindsey v. State* (Civ. App.), 66 S. W. 334.

849. Any Officer Collecting Money for County Shall Report the Same.—When any officer collects money belonging to, and for the use of, any county, he shall, except where otherwise provided in this title, forthwith report the same in writing to the clerk of the county court of the county to which such money belongs, stating fully in such report from whom collected, the amount collected, the time when collected, and by virtue of what authority or process collected. [R. S. Art. 1427.]

This article binds the sureties of an officer for such moneys only as he receives in his official capacity. *Henderson County v. Richardson*, 15 C. A. 699, 40 S. W. 38.

The manner of settlement of the payment by a judge to the county of property bought at the sheriff's sale held valid. *Felts v. Bell County*, 103 Tex. 616, 132 S. W. 123.

850. Money Collected by Officer Shall Be Charged to Him, Etc.—When any officer reports to the clerk of the county court any money collected by such officer for the use of the county, the amount of money so collected shall be charged to such officer, and he may discharge himself from such indebtedness by producing the receipt of the proper county treasurer therefor. [R. S. Art. 1428.]

Where a county judge by purchasing property at a sheriff's sale was accountable to the county for the purchase price, the county's crediting itself on a debt owing him to the extent of the purchase had the same effect as if the money was paid by him. *Felts v. Bell County*, 103 Tex. 616, 132 S. W. 123.

851. Estray Account Shall Be Kept in Ledger.—There shall also be kept in the ledger, provided for in Article 1401, an estray account, in which shall be entered on the debit side of each application made to the clerk of the county court to estray any animal in his county by entering the date of the application, the name of the person estraying, and a brief description of the animal, or animals, to be estrayed; and the amount of such charge shall be left blank until said person shall file his account of the sale of said animal or animals; and, upon the filing of said account, the net amount due the county from such sale shall be entered in the blank. [R. S. Art. 1429.]

852. Duty of County Clerk When Receipt of Estray Money is Presented.—When the receipt of the county treasurer is presented to the clerk, showing any amount paid into the treasury on account of the sale of an estray, the same shall be entered on the credit side of the account, showing the date, name of payer, amount paid and a brief description of the estray, and such amount shall be charged on the debit side of the county treasurer's account. [R. S. Art. 1430.]

853. County Clerk Shall Keep Account With County Treasurer.—An account shall also be kept in said ledger by the clerk with the county treasurer, in which such treasurer shall be charged separately with the amount of each fund for which he gives a receipt to the sheriff, collector, or other person paying the same into the treasury; and such treasurer shall have credit for all moneys paid out by him, when the commissioners' court has approved his reports of the same, and for his legal commissions. [R. S. Art. 1431.]

854. County Treasurer Shall Register Claims Against the County.—The county treasurer of each county shall keep a well-bound book in which he shall register all claims against his county, when presented to him for registration; and no claim, or any part thereof, against a county shall be paid by such county treasurer, nor shall

the same, or any part thereof, be received by any officer in payment of any indebtedness to the county, until it has been duly registered in accordance with the provisions of this title. [R. S. Art. 1432.]

See notes under Sec. 855.

855. How Claims Against the County Shall Be Classified.—Claims against a county shall be registered in three classes, as follows:

1. All jury scrip and scrip issued for feeding jurors.
2. All scrip issued under the provisions of the road law or for work done on roads and bridges.
3. All the general indebtedness of the county, including feeding and guarding prisoners, and paupers' claims. [R. S. Art. 1433.]

The treasurer shall pay off all claims in each class in the order in which they are registered. *Clarke & Courts v. San Jacinto County*, 18 C. A. 204, 45 S. W. 315.

The holder of a registered claim can insist that the claim be paid as provided in the above article notwithstanding the provisions of Articles 1438 and 1439 giving the commissioners' court power to create other classes of funds. *Id.*

Under Articles 1432-1437, the county treasurer shall register all claims against the county and shall pay off each class in the order registered. *Shock v. Colorado County*, 52 C. A. 473, 115 S. W. 63.

856. Manner of Registering Claims Against the County.—Each claim shall be entered in the register, stating the class to which it belongs, the name of the payee, the amount, the date of the claim, the date of registration, the number of such claim, by what authority issued, and for what service the same was issued. [R. S. Art. 1434.]

When a warrant is issued on the treasurer and not paid because the fund upon which it was drawn has been used to pay claims of a different class a judgment may be had against the county. *Clarke & Courts v. San Jacinto County*, 18 C. A. 204, 45 S. W. 315.

Judgment held properly allowed against a county for refusal to pay warrant. *Id.*

857. What Shall Be Written on Registered Claim.—When a claim has been registered, the treasurer shall write on the face of the same its registered number, the word "registered," the date of such registration, and shall sign his name officially thereto. [R. S. Art. 1435.]

858. Claims Shall Be Numbered, in What Order.—Claims shall be numbered in the order presented, and, if more than one claim is presented at one and the same time, they shall be numbered in the order of their date. [R. S. Art. 1436.]

859. Order in Which Claims Shall Be Paid.—The treasurer shall

pay off the claims in each class in the order in which they are registered. [R. S. Art. 1437.]

860. Classification of County Funds Received by County Treasurer.—The funds received by the county treasurer shall be classed as follows:

1. All jury fees, all money received from the sale of estrays, and all occupation taxes; and this class of funds shall be appropriated to the payment of all claims registered in class first, described in Article 1433.

2. All money received under any of the provisions of the road and bridge law, including the penalties recovered from railroads for failing to repair crossings, prescribed in Article 6494, and all fines and forfeitures; and this fund shall be appropriated to the payment of all claims registered in class second.

3. All money received, not otherwise appropriated herein or by the commissioners' court; and the funds of this class shall be appropriated to the payment of all claims registered in class third. [R. S. Art. 1438; Const. Art. 16, Sec. 24.]

861. Commissioners' Court May Create Other Classes of Funds, Etc.—The commissioners' court shall have power to cause such other accounts to be kept, creating other classes of funds, as it may deem proper, and require the scrip to be issued against the same and registered accordingly. [R. S. Art. 1439.]

862. Said Court May Transfer One Class of Funds to Another, Except, Etc.—The commissioners' court shall have power, by an order to that effect, to transfer the money in hand from one fund to another, as in its judgment is deemed necessary and proper, except that the funds which belong to class first shall never be diverted from the payment of the claims to which the same are appropriated by Article 1438, unless there is an excess of such funds. [R. S. Art. 1440.]

863. County Treasurer Shall Report Registered Claims Each Month.—The county treasurer shall, at the end of each month, file in the office of the clerk of the county court of his county a report in writing, showing the total amount of claims registered by him during said month, stating each class separately. [R. S. Art. 1441.]

864. Clerk Shall Enter Report Upon Ledger, Etc.—The clerk with whom the report required by the preceding article is filed shall enter the same upon the ledger under the head of "Registered indebtedness of the county," keeping a separate account of each class of indebtedness, and, from the reports of the treasurer of disbursements made, credit said accounts with the total amount of vouchers of each class of claims paid. [R. S. Art. 1442.]

865. Party Receiving Payment of Claim Shall Receipt Thereon.—The county treasurer, or any other officer disbursing money for the county, or receiving county claims in payment of dues of any kind, shall require the party receiving payment of, or credit for the same, his agent or attorney, to receipt in writing upon the face of such claim for the amount so paid or received thereon. [R. S. Art. 1443.]

866. Officer Receiving Claim in Payment of Debt to County Shall Report List of Same.—Every officer who shall collect any fine, penalty, forfeiture, judgment, tax or other indebtedness due the county, in claims against the county, shall keep a descriptive list of such claims, and shall when he reports such collection file with his report a list stating the party in whose favor each claim was issued, the class and registered number thereof, the name of the party paying in such claim, and the amount received, and for what purpose received. [R. S. Art. 1444.]

867. Claims Received by Other Officer Than County Treasurer Shall Be Reported to County Treasurer.—Claims received for the county by any officer other than the treasurer shall be turned over together with the list mentioned in the preceding article to the county treasurer, who shall give a proper receipt for the same, and the county treasurer shall file said list with his report in the office of the clerk of the county court. [R. S. Art. 1445.]

868. Duty of the County Treasurer to Keep Accounts, Etc.—The county treasurer shall keep accurate accounts showing all the transactions of his office in detail; and all warrants by him paid off shall be punched at the time he pays them; and the vouchers relating to and accompanying each report shall be presented to the commissioners' court with the corresponding report, when it shall be the duty of said court to compare the vouchers with the report, and all proper vouchers shall be allowed and the treasurer credited with the amount thereof. [R. S. Art. 1446.]

869. Claim Shall Be Canceled, When and How.—When a claim presented as a voucher has been found by the court to be correct, the court shall cause the same to be canceled by writing or stamping upon the face thereof the word "canceled," and the clerk shall attest the same by his official signature. [R. S. Art. 1447.]

870. Report of Treasurer, Order Approving; to Recite What; Credit.—When the commissioners' court has compared and examined the quarterly report of the treasurer, and found the same correct, it shall cause an order to be entered upon the minutes of the court, stating the approval thereof, which order shall recite separately, the amount received and paid out of each fund by the treasurer since the preceding treasurer's quarterly report, and the bal-

ance of such fund, if any, remaining in the treasurer's hands, and the court shall cause the proper credit to be made in the accounts of the treasurer, in accordance with said order. [R. S. Art. 1448.]

871. Commissioners to Inspect and Count Cash, Etc., in Hands of Treasurer, Etc.—Said court shall actually inspect and count all the actual cash and assets in the hands of the treasurer belonging to the county at the time of the examination of his said report. [R. S. Art. 1449.]

The county school fund was embraced in this article requiring the county funds to be counted by the commissioners' court. *Poole v. Burnet County*, 97 Tex. 77, 76 S. W. 426.

872. Affidavit of Compliance, Etc.; Filing, Record and Publication of, Etc.—Prior to the adjournment of each regular term of the court, the county judge and each of the commissioners shall make affidavit in writing that the requirements of Articles 1448 and 1449 have been in all things fully complied with by them at said term of said court, and that the cash and other assets mentioned in said county treasurer's quarterly report made by said treasurer to said court, and held by him for the county, have been fully inspected and counted by them, giving the amount of said money and other assets in his hands; which affidavits of the members shall be filed with the county clerk of the county, and by him recorded in the minutes of the said county commissioners' court of the term at which the same were filed; and the same shall be published in some newspaper published in the county, if there be a newspaper published in the county, for one time, to be paid for at the same rate as other legal notices. [R. S. Art. 1450.]

873. Commissioners' Court Shall Examine and Correct All Accounts and Reports, Etc.—The Commissioners' court shall, at each regular term, examine all accounts and reports relating to the finances of the county, and compare the same with the vouchers accompanying them, and cause such corrections to be made as are necessary, in order to make said accounts and reports correct, and shall cause all orders made by them, appertaining to said accounts and reports, to be properly entered upon the minutes of said court and noted upon said accounts and reports. [R. S. Art. 1451.]

874. Reports and Vouchers Shall Be Filed and Preserved in County Clerk's Office.—All reports and vouchers shall be filed in the office of the clerk of the county court, and shall be carefully preserved therein, and shall be briefly noted in the proper account upon the ledger. [R. S. Art. 1452.]

875. District Judge Shall Appoint Committee to Examine Into the Finances of County.—At each term of the district court, the

district judge, upon request of the grand jury, may appoint a committee consisting of three citizens of the county, men of good moral character and intelligence, and experienced accountants, to examine into the condition of the finances of the county. [R. S. Art. 1453.]

876. Duty of Such Committee in Conducting Examination.—It shall be the duty of the committee provided for in the preceding article to examine all the books, accounts, reports, vouchers and orders of the commissioners' court relating to the finances of the county that have not been examined and reported upon by a previous committee to count all the money in the office of the county treasurer belonging to the county, and to make such other examination as to them may seem necessary and proper in order to ascertain the true condition of the finances of the county, and the court shall, if necessary, upon the application of said committee, send for persons and evidence to aid them in their investigation. [R. S., Art. 1454.]

877. Report of Committee and What It Shall Set Forth.—Said committee shall, at the earliest practicable day after their appointment, make to said district court a report in writing, in detail, stating whether the books and accounts required to be kept by the provisions of this title are correctly kept in accordance with said provisions, and setting forth fully the condition of the finances of the county, the state of each officer's account, and specifying all irregularities, omissions or malfeasance of any kind that they may discover. Said report shall be signed and sworn to by said committee and filed in the office of the clerk of said district court, and the attention of the grand jury called thereto as soon after the filing of the same as practicable. [R. S., Art. 1455.]

878. Compensation of Committeemen Appointed by District Judge.—Said committeemen shall each be entitled to receive for their services three dollars for each day, not to exceed five days, that they may be engaged in the performance of their duties as such, which fees shall be paid out of the county treasury upon the certificate of the district judge stating the number of days served. [R. S., Art. 1456.]

879. All Reports Made by County Officers Shall Be Sworn to.—All reports required under any of the provisions of this title shall be sworn to by the officer making the same, before some officer authorized to administer oaths. [R. S., Art. 1457.]

880. When and Where Monthly Reports Shall Be Filed.—All monthly reports required by any of the provisions of this title shall be filed in the office of the clerk of the county court of the proper county within five days after the end of each month. [R. S., Art. 1458.]

CHAPTER XXIX.

LAWS RELATING TO AVAILABLE FREE SCHOOL FUNDS, CERTAIN POWERS OF COMMISSIONERS' COURTS AND PHYSICIANS, EMBALMERS, PLUMBERS AND HUNTERS' LICENSES.

(From Chapter 9, Title 48 and Other Sections of R. S. 1911.)

	Sec.		Sec.
What Moneys Shall Constitute		License Fee of Embalmers—Ap-	
School Fund	881	plication to Engage in Busi-	
County School Fund; Income		ness; Skill Required.....	902
from Lease of Land.....	882	Renewal of Embalmer's License;	
Certain Locations of Public Val-		Fee for	903
idated	883	Embalmer's License to Be Re-	
Lands Sold for Taxes to State,		voked, When, How.....	904
and Bid in by Comptroller.....	884	Department to Be Self-Sustain-	
All Unappropriated Lands De-		ing; Moneys Received, How Ap-	
clared Part of Permanent		propriated	905
School Fund	885	Unlawful to Practice Without	
One-half of Public Domain Add-		License	906
ed to Permanent Fund, etc.....	886	Provisions Do Not Apply to	
Lands to Be Set Aside as Asy-		What	907
lum Lands	887	Fees for Hunting License—Hunt-	
To Take Land for; Exercise		ing Licenses Required of Non-	
Right of Eminent Domain.....	888	residents; Requisites and Dura-	
Interest, Sinking Fund on		tion	908
Bonds; Levy of Taxes for.....	889	Hunting Licenses Required of	
Cession of State Lands for the		Residents, When; Requisites;	
Benefit of	890	Authority Given, Duration;	
City and County Treasurers Cust-		Fee	909
odian of Funds, Exclusive Use		County Clerk to Issue Local	
of	891	Hunting Licenses, etc., Keep	
Bonds to Be Issued in Cases of		Stubs of, etc.....	910
Counties, Cities and Towns.....	892	County Clerk to Keep Record.....	911
License Fees of Physicians—Dis-		License Fee of Plumbers—Board	
trict Clerks to Keep Regis-		to Examine Plumbers and	
ter	893	Plumbing Inspectors; Licenses	
Reciprocity Allowed by Board of		and Register of.....	912
Medical Examiners	894	Licenses Not to Issue for More	
Applicants for License to Practice		Than One Year, [Renewable,	
Medicine to Pass Examination..	895	etc.	913
Disposition of Fees of Medical		License Fees; Disposition of.....	914
Board	896	Members of the Board to Receive	
Definitions of Physician and Sur-		no Compensation	915
geon	897	Licenses Not Transferable	916
Assessment or Payment of Taxes		Examination and Fee Not Re-	
May Be Proven, How.....	898	quired of Same Person But	
Power of Commissioners' Court		Once	917
to Fill Certain Vacancies.....	899	No License Until Examination	
How Vacancy in County Office		Passed	918
Shall Be Filled, etc.....	900	Every Plumbing Firm to Have	
Warrants Issued Against County		One Member a Practical	
by Judge or Court Shall Be		Plumber	919
Attested by Clerk, etc.....	901		

881. What Moneys Shall Constitute School Fund.—Besides other available school funds provided by law, one-fourth of all occupation taxes and one dollar poll tax levied and collected for the use of public free schools, exclusive of the delinquencies and cost of collection, the interest arising from any bonds or funds belonging to the permanent school fund, and all the interest derivable from the proceeds of sales of lands heretofore set apart for the permanent school fund, which have hitherto, or may hereafter, come into the State Treasury, all moneys arising from the lease of school lands, and such an amount of State tax, not to exceed twenty cents on the one hundred dollars valuation of property, as may be, from time to time, levied by the Legislature, shall constitute the available school fund, which fund shall be apportioned annually to the several counties of this State, according to the scholastic population of each, for the support and maintenance of the public free schools. [R. S., Art. 2725.]

The school fund of one year cannot be used to pay off the debt of another year. *Collier v. Peacock* (Civ. App.), 55 S. W. 756.

By this article and constitutional provisions the intention of the people in granting lands to counties for educational purposes was to impose upon the several counties the duties of trustees as to such lands, the proceeds of sale, interest on such proceeds invested and rents arising from lease of such lands for the purpose of carrying out the trust and administer it in the manner prescribed by law. *Board of School Trustees v. Webb County* (Civ. App.), 64 S. W. 488.

882. County School Fund; Income From Lease of Land.—Besides other available school funds provided by law, the proceeds of any leasing or renting of lands, heretofore granted by the State of Texas to the several counties thereof for educational purposes, shall be appropriated by the commissioners' courts of said counties in the same manner as is provided by law for the appropriation of the interest on bonds purchased with the proceeds of the sale of such lands; and the proceeds arising from the sale of timber on said lands, or any part thereof, shall be invested in like manner as the Constitution and law requires of proceeds of sales of such lands; and it shall be unlawful for the commissioners' court of any county to apply said proceeds, or any part thereof, to any other purpose, or to loan the same, except as above required. [R. S., Art. 2726.]

883. Certain Location of Public Lands Validated.—Any and all public lands heretofore surveyed by railroads, or corporations, or any company, or any person in this State, for the benefit of the public free schools of this State, by virtue of any certificate, valid or invalid, void or voidable, be and the same are hereby declared

to be lands belonging to the public free schools of this State. [R. S., Art. 5383.]

This article was intended to apply to all lands theretofore surveyed for the benefit of the public free schools and to appropriate such lands to that fund, and it applies to surveys in which there are irregularities in the manner of making the same, or to the failure to comply with the statutory provisions with reference to the entry application for survey or in returning the certificate and field notes of such surveys to the general land office. *Eyl v. State*, 37 C. A. 297, 84 S. W. 611.

884. Lands Sold for Taxes to State and Bid In by Comptroller.—When lands are sold in unorganized counties and bid in by the Comptroller for the State for the taxes due thereon, and are not redeemed by the owner thereof, nor his agent, within two years, by the party redeeming the same paying double the amount for which said land was sold, then the land thus sold and unredeemed shall become vacant and revert to and become a part of the public free school fund, to be sold and disposed of as other lands belonging to the public free school fund are to be sold and disposed of by law. [R. S., Art. 5384.]

885. All Unappropriated Lands Declared Part of Permanent School Fund.—All lands heretofore set apart under the Constitution and laws of Texas, and all of the unappropriated public domain remaining in the State of Texas, of whatever character, and wheresoever located, including any lands hereafter recovered by the State, except that included in lakes, bays and islands along the Gulf of Mexico within tidewater limits, is set apart and granted to the permanent school fund of the State; and all such lands heretofore or hereafter recovered from railway companies, firms, persons, or other corporations by the State, by suit or otherwise, and constituting a part of said school fund as herein provided, shall be disposed of as other school lands, except as otherwise provided by law. In all cases where said land, or any portion thereof, has been surveyed into tracts of six hundred and forty acres, more or less, and field notes thereof returned to and filed in the General Land Office, the same is hereby declared a sufficient designation of said land; and the Commissioner of the General Land Office shall dispose of the same by the survey and block numbers contained in said field notes. [R. S., Art. 5385.]

For construction of Article 7, Section 2, of the Constitution, setting apart school lands, see *G. & S. A. Ry. Co. v. State*, 77 Tex. 367, 12 S. W. 988, 13 S. W. 619; *Von Rosenberg v. Cuellar*, 80 Tex. 249, 16 S. W. 58; *Pulian v. Runnels County*, 79 Tex. 363, 15 S. W. 277.

Acts Twenty-sixth Legislature, c. 81, declaring that all lands theretofore

or thereafter recovered by the State shall at once become part of the permanent school fund, cannot have a retroactive effect as to land, the patent to which was prior to such act validated by the Legislature, after having been declared invalid by a judgment in favor of the State. *State v. Powell* (Civ. App.), 134 S. W. 746.

In the case of lands equitably owned by the public free school fund, one whose homestead survey thereof under which he claims not having been made until October, 1898, and the benefit of these laws of 1899 and 1900 being limited to those whose homestead surveys were made prior to such time, it cannot avail him that he became an actual settler and made application for such survey before that time. *Burkhead v. Bush* (Civ. App.), 75 S. W. 68.

Where one takes all the necessary steps in 1896 and subsequently to acquire land under the homestead laws as then existing, before the land had been withdrawn by the act of 1900, he has title superior to one who purchases from the State (land in question) as school land by patent issued to him in October, 1902. *Lane v. Huffman* (Civ. App.), 82 S. W. 1017.

886. One-half of Public Domain Added to Permanent Fund, Etc.—After the payment of the amounts due from the State to the common free school fund out of the proceeds of the sales heretofore made, or hereafter to be made, of that portion of the public lands set aside for the payment of the public debt by an act approved July 14, 1879, and an act amendatory thereof approved March 11, 1881, and the payment directed to be made to the common school and university funds by an act approved February 23, 1883, the remainder of said land, not to exceed two million of acres, contained in the counties and territory specially mentioned in said acts, or the proceeds thereof, set aside by said acts for the payment of the public debt, heretofore or hereafter to be received by the State, shall one-half thereof constitute a permanent endowment fund for the University of Texas and its branches, including the branch for the instruction of colored youths. [R. S., Art. 5386.]

887. Lands to Be Set Aside as Asylum Lands.—The four hundred thousand acres of land set apart for the lunatic asylum, the blind asylum, the asylum for the deaf and dumb, and an orphan asylum, in equal portions of one hundred thousand acres for each of said asylums, by the provisions of an act of the Legislature entitled, "An act setting aside and appropriating land for the benefit of asylums," approved August 30, 1856, is hereby recognized and set apart to provide a permanent fund for the support, maintenance and improvement of such asylums. [R. S., Art. 5387.]

The term "reservation" used in the grant of a certificate held intended in the sense of lands subject to appropriation which have at different times been reserved temporarily from general and subjected to particular locations, and does not include islands. *Roberts v. Terrell*, 101 Tex. 577, 110 S. W. 733.

It is the policy of the State of Texas to reserve its islands from location. *Texas Channel & Dock Co. v. State* (Civ. App.), 133 S. W. 381.

A public land certificate issued under a special act not authorizing its location on an island, held not subject to location on an island belonging to the State. *Id.*

Certain special acts held not to constitute a ratification of the location of certain land certificates by W. on islands belonging to the State. *Id.*

Lands situated on islands in Texas are reserved from location. *Texas Channel & Dock Co. v. State*, 104 Tex. 168, 135 S. W. 522.

Title to a part of public lands appropriated for a particular use held to become a vested right not impaired by abandonment. *Talley v. Lamar County*, 104 Tex. 295, 137 S. W. 1125.

The acts creating the Memphis and El Paso reservation did not operate as an appropriation of the lands, but only as a mere withdrawal from the location by others than those for whose benefit the reservation was created, and not to preclude the lease of unlocated portions thereof by the Commissioner of the General Land Office. *Stokes v. Riley*, 29 C. A. 373, 68 S. W. 703.

888. To Take Lands for; Exercise Right of Eminent Domain.—Said counties and cities shall have the power to take and appropriate such land and other property as may be deemed necessary for the establishment, location, construction and maintenance of said seawalls and breakwaters, and to define the area of land needed, and to acquire, take, hold and enjoy the same for the purposes aforesaid, and to that end shall have the right to exercise the right of eminent domain and to condemn lands for the uses and purposes aforesaid, in the manner and under the conditions provided by law in case of railroad corporations; provided, nevertheless, that said county commissioners' court, or said municipal authorities, shall be empowered to take the fee simple estate to the land condemned or acquired hereunder, whenever deemed necessary for the purposes of this act; and, provided, further, that before exercising the power of eminent domain hereunder said county commissioners' court, or said municipal authorities, shall, by order, ordinance, or resolution duly entered on the minutes of the county commissioners' court, or the city council, define and describe lands needed, and determine whether an easement or fee-simple estate in said land shall be taken. [R. S., Art. 5587.]

The only conditions necessary to give county right to condemn land for purposes stated in this act are that the owner of the land shall fail to agree with the county for its purchase, and that the commissioners' court shall by order entered upon its minutes, define and describe the lands needed and determine whether an easement or fee-simple estate in said land shall be taken. *Johnson v. Galveston County* (Civ. App.), 85 S. W. 511.

In a suit brought under this act to condemn land, the jurisdiction of

the county court, while not *eo nomine*, is such in effect. The proceeding cannot be commenced in the county court, but must be commenced by a petition to the county judge stating facts which show that the petitioner is entitled to condemn the property. The county judge has authority to appoint three commissioners to determine the amount of damages to which the owner of the land is entitled for the taking of his land for public use. It is only when one of the parties is dissatisfied with the award of damages, that the county court acquires jurisdiction to try the issues involved in the proceedings. It follows that unless the original petition states facts sufficient to authorize the county judge to appoint commissioners, his action in making such appointment is void, and the commissioners are without jurisdiction to assess damages. There being no jurisdiction in the court *a quo*, the appellate (county) court could acquire none, and no amendment of the petition in the county court could avail to cure omission of necessary jurisdictional allegations in the original petition. *Johnston v. Galveston County* (Civ. App.), 85 S. W. 511.

The manner of condemning land is the same as that provided in Art. 6506, regulating the condemnation of land by railroad corporations. *Johnston v. Galveston County* (Civ. App.), 85 S. W. 511.

When the county has complied with the statute authorizing it to condemn land for purpose of making seawall, and it and its agents or contractors are in lawful possession of the premises pending an appeal in the condemnation proceedings, an injunction will not lie to prevent acting under the proceedings of condemnation, because there is an adequate remedy at law. *Johnston v. O'Rourke & Co* (Civ. App.), 85 S. W. 503.

889. Interest, Sinking Fund on Bonds; Levy of Taxes for.—

Whenever bonds are issued under the preceding article, the county commissioners' court, or municipal authorities, shall annually levy, assess and collect, in the mode prescribed by law for other county or municipal taxes, a tax on the real estate and personal or mixed property in said county, or city, sufficient to pay the interest and provide a sinking fund of not less than two per cent of the principal of all of said bonds; and all taxes collected by virtue hereof shall be held in trust by said county, or city, as a special and inviolable fund for the payment of interest and principal of said bonds; provided, however, that any surplus above the amount required to meet the annual interest may be invested for the benefit of the sinking fund in the bonds issued hereunder, or in bonds of the State of Texas, or of the United States. [R. S., Art. 5591.]

890. Cession of State Lands for the Benefit of.—The better to enable said counties and cities to secure the protection herein provided for, and to aid in the construction of said works, the right to the use and control for the purposes prescribed by this chapter, of so much of the land or sea bottom below high tide as may be deemed necessary by said county commissioners' court, or municipal authorities, is hereby ceded by the State of Texas to counties

and cities availing themselves of the provisions of this chapter. [R. S., Art. 5592.]

891. City and County Treasurers Custodian of Funds, Exclusive Use of.—All funds, revenues and moneys derived from the sale of the bonds herein authorized, and from the sale or rent of reclaimed or other lands acquired under this chapter and from additional uses of said works as herein authorized, shall be deposited with the county or city treasurer, as the case may be, and shall be held in trust exclusively for the construction and maintenance of seawalls and breakwaters, including the purchase of the right of way therefor; and all moneys derived from the assessment and levy of taxes as aforesaid are declared to be a trust fund for the payment of interest and principal of bonds to be issued under this chapter; and the use or diversion of such moneys for any other purposes whatsoever is hereby prohibited, and a violation of this article shall constitute a misapplication of public money, and the person or persons so offending shall be punished as provided in Article 96 of the Penal Code of the State of Texas. [R. S., Art. 5593.]

892. Bonds to Be Issued in Cases of Counties, Cities and Towns.—All bonds issued hereunder shall be issued under and subject to the provisions of Articles 616-620, 622-625, inclusive, of the Revised Statutes of this State now in force, in so far as said articles do not conflict with the provisions of this chapter, and this chapter shall apply to all cities bordering on the coast of the Gulf of Mexico, whether said cities are incorporated by general or special laws; and all laws and parts of laws in conflict herewith are hereby repealed. [R. S., Art. 5594.]

For local statutes as to Galveston Seawall, see Acts 1905, p. 54, as amended by Acts 1911, S. S. p. 99.

If one dams up water on his land and it backs up and overflows and damages another he is liable for damages caused. *Gembler v. Echterhoff* (Civ. App.), 57 S. W. 313.

Equity will enjoin an owner of land bordering on a stream from filling in the low places on his land, and constructing a levee along the stream on his side, so as to cause the stream to unnaturally overflow the lands of another bordering on the opposite side of the stream. *Sullivan v. Dooley*, 31 C. A. 589, 73 S. W. 82.

An owner of land bounded on a stream held entitled to erect levees on his land, provided he does not materially injure the adjacent owner. *Knight v. Durham* (Civ. App.), 136 S. W. 591.

A landowner cannot lawfully construct an embankment that turns the overflow of a stream upon the land of another. *Way v. Roddy* (Civ. App.), 140 S. W. 1148.

In an action to enjoin the construction of a levee, evidence held insufficient to show injury to plaintiff by a wrongful diversion to the overflow of the stream. *Id.*

893. License Fees of Physicians; District Clerks to Keep Register.—It is hereby made the duty of the district clerk of each county in this State to purchase a book of suitable size, to be known as the "Medical Register" of such county, and set apart one full page for the registration of each physician, and to record in the same the name and record of each practitioner who presents a certificate from the State Board of Examiners, issued under this law. The clerk shall receive the sum of one dollar from each physician so registered, which shall be his full compensation for all duties required under this law. When any physician shall die, or remove from the county, or have his license revoked, it shall be the duty of said clerk to make a note of facts at the bottom of the page as closing the record. On the first day of January in each year, said clerk shall, on request of the board, certify to the office of the State Board of Medical Examiners a correct list of the physicians then registered in the county, together with such other information as said board may require. A copy from the medical register pertaining to any person, certified to by said clerk under the seal of said court, also a certificate issued by said officer certifying that any person named has or has not registered in said office as required by this chapter, shall be admitted as evidence in all trial courts. [R. S., Art. 5737.]

See *Morse v. State Board of Medical Examiners*, 57 C. A. 93, 122 S. W. 446.
Also *Lockhart v. State*, 124 S. W. 923.

894. Reciprocity Allowed by Board of Medical Examiners.—The Board of Medical Examiners may, at its discretion, arrange for reciprocity in license with the authorities of other States and Territories having requirements equal to those established by this law. License may be granted applicants for license under such reciprocity on payment of twenty dollars. [R. S., Art. 5738.]

895. Applicants for License to Practice Medicine to Pass Examinations, Etc.—All applicants for license to practice medicine in this State, not otherwise licensed under the provisions of law, must successfully pass an examination before the Board of Medical Examiners established by this law. Applicants to be eligible for examination must present satisfactory evidence to the board that they are more than twenty-one years of age, of good moral character and graduates of bona fide, reputable medical schools. Such schools shall be considered reputable within the meaning of this law, whose entrance requirements and courses of instruction are as high as those adopted by the better class of medical schools of the United States, whose course of instruction shall embrace not

less than four terms of five months each. Application for examination must be made in writing under affidavit to the secretary of the board, on forms prepared by the board, accompanied by a fee of fifteen dollars; except, when an applicant desires to practice obstetrics alone, the fee shall be five dollars. Such applicants shall be given due notice of the date and place of examination. Applicants to practice obstetrics in the State of Texas, upon proper application, shall be examined by the board in obstetrics only, and upon satisfactory examination shall be licensed to practice that branch only; provided, this shall not apply to those who do not follow obstetrics as a profession, and who do not advertise themselves as obstetricians or midwives, or hold themselves out to the public as so practicing. In case any applicant, because of failure to pass examination, be refused a license, he or she shall, after one year, be permitted to take a second examination without an additional fee. [R. S., Art. 5739.]

896. Disposition of Fees of Medical Board.—The fund realized from the aforesaid fees shall be applied first to the payment of necessary expenses of the Board of Examiners; any remaining funds shall be applied by the order of the board to compensating members of the board in proportion to their labors. [R. S., Art. 5740.]

897. Definitions of "Physician" and "Surgeon."—The terms, "physician" and "surgeon," as used in this law, shall be construed as synonymous, and the terms, "practitioners" and practitioners of medicine," and "practice of medicine," as used in this law, shall be construed to refer to and include physicians and surgeons. [R. S., Art. 5746.]

Where one has been granted a certificate under Articles 3784, 3785, Sayles' Ann. Civ. St. 1897, to practice medicine in any county, and the certificate has been duly recorded, the board of examiners has no right to refuse a verification license to an applicant therefor, nor to limit the certificate of a female applicant to the practice of obstetrics. *Board of Medical Examiners v. Taylor*, 56 C. A. 291, 120 S. W. 575.

Under Rev. St. 1895, Arts. 3784, 3785, requiring the board of medical examiners to examine applicants for certificates to practice medicine in any of its branches in enumerated subjects, and providing that the board, being satisfied as to the qualifications of the applicant, shall grant him a certificate which shall entitle the person to practice medicine, etc., a certificate reciting that the board has examined a person, and has found her qualified to practice the branches of obstetrics and diseases peculiar to women and children, is, in the absence of any evidence to the contrary, a valid license to such person to practice medicine as limited in the certificate, and such person is entitled to a verification certificate, under Acts 1907, c. 123. *State Board of Medical Examiners v. Taylor*, 103 Tex. 444, 129 S. W. 600.

A license to practice medicine is a privilege or franchise, the refusal to

grant which does not constitute a penalty. *Morse v. State Board of Medical Examiners*, 57 C. A. 93, 122 S. W. 446.

898. Assessment or Payment of Taxes May Be Proven, How.—Whenever in any cause it may be material to prove the assessment of any property for taxes, or the payment of any taxes, the certificate of the Comptroller of such assessment from the rolls deposited in his office, or that the payment of such taxes is shown by the records of his office, shall be admissible in evidence to prove the same. [R. S., Art. 3708.]

899. Power of Commissioners' Court to Fill Certain Vacancies.—The said court shall have power to fill vacancies in the following named county offices, viz.: County judge, clerk of the county court, sheriff, county attorney, county treasurer, county surveyor, county hide inspector, assessor of taxes, collector of taxes, justices of the peace and constables. [R. S., Art. 2245.]

The Constitution (Sec. 14, Art. 16), requires district and county officers to reside within their districts or counties. An office is vacated by non-compliance with this requirement, and when such vacancy exists in any office named in this article, it is the duty of the commissioners' court to fill it. *Ehlinger v. Rankell*, 29 S. W. 240, 9 C. A. 424.

900. How Vacancy in County Office Shall Be Filled, Etc.—Such vacancies shall be filled by a majority vote of the members of said court present and voting, and the person chosen to fill any vacancy shall hold the office until the next general election. [R. S., Art. 2246.]

901. Warrants Issued Against County by Judge or Court Shall Be Attested by Clerk, Etc.—All warrants or scrip issued against the county treasurer by any judge or court shall be signed and attested by the clerk or judge of the court issuing the same, under his official seal; and no justice of the peace shall have authority to issue warrants against the treasury for any purpose whatever, except as provided in Article 1117 (1170) of the Code of Criminal Procedure. [R. S., Art. 1459.]

A warrant issued upon a claim audited and allowed by the county commissioners' court need not be signed by the judge. *Callaghan v. Sallaway*, 23 S. W. 837, 5 C. A. 239.

The holder of a county warrant is not charged with notice by any order made by the commissioners' court after the order directing its issuance, directing the treasurer to pay no claim which has not been registered under Act May 1, 1874. *Leach v. Wilson County*, 68 Tex, 353, 4 S. W. 613.

Though a warrant be not negotiable, the county would be liable to an

equitable transferee thereof in the absence of any defenses. *Shock v. Colorado County*, 52 C. A. 473, 115 S. W. 61.

Warrants to pay a contractor constructing a court house are nonnegotiable, and cannot be made so by a provision of the contract. *Allen v. Abernethy* (Civ. App.), 151 S. W. 343.

Warrants are not void because they are made payable at the county seat or at a point outside of the State. *Id.*

The county held to have no property in the proceeds of a warrant issued to the county tax assessor for his fees and assigned by him to and collected by a creditor, though he was at the time indebted to the county for excess fees. *American Nat. Bank v. Petry* (Civ. App.), 141 S. W. 1040.

While a county warrant is *prima facie* evidence of a subsisting debt, and assignable, it affords no right of action until the county has by some act repudiated the claim. *Leach v. Wilson County*, 62 Tex. 331. See *San Patricio County v. McClane*, 58 Tex. 243.

902. License Fee of Embalmers; Application to Engage in Business; Skill Required.—Every person engaged or desiring to engage in the practice of embalming in connection with the care and disposition of dead human bodies within the State of Texas shall make a written application to the State Board of Embalming for a license, accompanying the same with a license fee of five dollars, whereupon the applicant as aforesaid shall present himself or herself before said board at a time and place to be fixed by said board; and, if the board shall find upon examination that the applicant is of good moral character, possessed of the knowledge of the venous arterial system, the location of the heart, lungs, bladder, womb and other organs of the human body, and the location of abdominal, pleural and thoracic cavities, location of the carotid, brachial, radial, ulnar, femoral and tibial arteries, a knowledge of the science of embalming and the care and disposition of the dead, and has a reasonable knowledge of sanitation and the disinfection of bodies of diseased persons, and the apartment, clothing and bedding in case of death by infectious or contagious diseases, the board shall issue to said applicant a license as a duly licensed embalmer, authorizing him to practice the science of embalming. Such license shall be signed by a majority of the board and attested by its seal. All persons receiving license under the provisions of this chapter shall have said license registered in the county clerk's office in the county in the jurisdiction of which it is proposed to carry on said practice, and shall display said license in a conspicuous place of business of said person so licensed. [R. S., Art. 4600.]

903. Renewal of Embalmer's License; Fee for.—Every registered embalmer, who desires to continue the practice of his profession, shall annually thereafter, during the time he shall continue in such practice, on such date as said board may determine, pay to the

secretary of said board a fee of two dollars for the renewal of said license. [R. S., Art. 4601.]

904. Embalmer's License to Be Revoked, When, How.—The State Board of Embalming shall be and is hereby authorized to revoke any license issued by them for good and sufficient cause, subject to the right of appeal to the State Board of Health, whose decision shall be final. [R. S., Art. 4602.]

905. Department to Be Self-sustaining; Moneys Received, How Appropriated.—All expense, salaries and per diem to members of this board shall be paid from fees received under the provisions of this chapter, and shall in no manner be an expense to the State. All moneys received in excess of per diem allowance, and other expenses provided for, shall be held by the secretary of said board as a special fund for meeting the expenses of the board. [R. S., Art. 4603.]

906. Unlawful to Practice Without License.—It shall be unlawful for any person not a registered embalmer to embalm or pretend to practice the science of embalming in connection with the care and disposition of the dead, unless said person is a registered embalmer, within the meaning of this chapter. [R. S., Art. 4604.]

907. Provisions Do Not Apply to What.—Nothing in this chapter shall apply to, or in any manner interfere with, the duties of any municipal, county and State officer, or State institution, nor apply to any person simply engaged in the furnishing of burial receptacles for the dead, but only to such person or persons engaged in the business of embalming in connection with the care and disposition of the dead. [R. S., Art. 4605.]

Where county removes physician appointed for stated time at stated salary without cause, held liable for salary less what he was able to earn because of release from duties as county physician. *Galveston County v. Ducie*, 91 Tex. 665, 45 S. W. 798.

908. Fees for Hunting License; Hunting Licenses Required of Non-residents; Requisites and Duration.—It shall hereafter be unlawful for any person who has not been a bona fide inhabitant of, and resident citizen of, this State for six months last past to hunt for or kill any game or birds protected by the laws of this State without first procuring a hunting license from the Game, Fish and Oyster Commissioner permitting him to do so, and paying to said Commissioner the sum of fifteen dollars. Said license shall be dated when issued and shall remain in force until the first day of September following thereafter. [R. S., Art. 4023.]

909. Hunting Licenses Required of Residents, When; Requisites;

Authority Given, Duration; Fee.—It shall hereafter be unlawful for any person to hunt or kill any game quadrupeds or game birds or wild fowl protected by the game laws of this State, except in the county of his residence or in counties adjoining the county of his residence or on land owned or controlled by him, without first obtaining a State hunting license from the Game, Fish and Oyster Commissioner permitting him to do so. Any person who has been a bona fide resident of this State for six months last past may procure a hunting license to hunt outside the boundaries of the county in which he resides, by paying a license fee of one dollar and seventy-five cents to the county clerk of the county in which he resides, to be dated when issued. Such license shall expire the first day of September of each year following such date. Such license shall authorize the person named therein to use firearms in the hunting or killing of game or game birds during the hunting season of that year, but only in the manner and time prescribed by law. Such license shall limit the number and quantity of game which may be taken or killed, in accordance with the provisions of law governing the subject. [R. S., Art. 4025.]

910. County Clerk to Issue Local Hunting Licenses, Etc., Keep Stubs of, Etc.—The county clerk of each county in this State is hereby authorized to issue local hunting licenses, under his official seal, to all persons complying with the provisions of this chapter, and shall fill out correctly and preserve the stubs attached thereto. [R. S., Art. 4026.]

911. County Clerk to Keep Record.—The county clerk shall keep a complete and correct record of hunting licenses issued, showing the name and place of residence of each licensee, and the serial number and date of the license so issued, in a book to be furnished by the Game, Fish and Oyster Commissioner; which record shall be kept in his office and be open to the inspection of the public at all times during office hours. Said books and license stubs and unused licenses shall always be open to inspection of the Game, Fish and Oyster Commissioner or his deputies. [R. S., Art. 4027.]

912. License Fee of Plumbers; Board to Examine Plumbers and Plumbing Inspectors; Licenses and Register of.—The Examining and Supervising Board of Plumbers, herein created, shall examine and pass upon all persons now engaged in the business of plumbing, whether as a master plumber, employing plumber, or journeyman plumber, in their respective cities, and all persons who may hereafter wish to engage in the business of plumbing as master plumber, employing plumber, or journeyman plumber, within their respective jurisdictions, and also all persons who may apply for the

office of plumbing inspector. They shall issue a license to such persons only as shall successfully pass a required examination. They shall also register, in a book to be kept for that purpose, the names and places of business of all persons to whom a plumber's license is issued. [R. S., Art. 991.]

913. Licenses Not to Issue for More Than One Year, Renewable, Etc.—They shall not issue licenses for more than one year, but the same shall be renewed from year to year, upon proper application. [R. S., Art. 992.]

914. License Fee; Disposition of.—Each applicant for examination for plumber's license shall pay, to such person as the examining and supervising board of plumbers may designate to receive the same, the sum of three dollars for each master plumber examined, and the sum of two dollars for each journeyman plumber examined, which fees may be used by said board to defray any of its legitimate expenses, the residue, if any, to be paid over to the treasurer of the city in which said board shall operate. [R. S., Art. 993.]

915. Members of Board to Receive No Compensation.—Members of the examining and supervising board of plumbers shall receive no compensation for their services on said board. [R. S., Art. 994.]

916. License Not Transferable.—Said license shall be non-transferable. [R. S., Art. 995.]

917. Examination and Fee Not Required of Same Person but Once.—The examination and examination fee shall not be required of the same person more than once. [R. S., Art. 996.]

918. No License Until Examination Passed.—The license shall not be issued to any person or firm to carry on or work at the business of plumbing, or to act as inspector of plumbing, until he or they shall have appeared before the examining and supervising board for examination and registration, and shall have successfully passed the required examination. [R. S., Art. 997.]

919. Every Plumbing Firm to Have One Member a Practical Plumber.—Every firm carrying on the business of plumbing shall have at least one member who is a practical plumber. [R. S., Art. 998.]

See Title 133, R. S. 1911 as to license to make and sell scales and measures.

See Title 119, R. S. 1911 as to license for ferries and regulations.

CHAPTER XXX.

ASSESSMENT AND COLLECTION OF TAXES BY CITIES AND TOWNS.

(From Chapter 7, Title 22, R. S.)

	SEC.		SEC.
Power of City Council to Provide for Collection of Taxes.....	920	Approval of Lists and Rolls by Board of Equalization.....	934
Power of City Council to Regulate Tax Lists, Assessment of Taxes, etc.	921	Action of Board of Equalization of Cities and Towns, Final.....	935
Duty of Taxpayers to Render Inventory of Property, etc.....	922	Compensation of Board of Equalization in Cities and Towns.....	936
Assessor and Collector, Powers, Duties, Bond, etc.....	923	Oath to Be Taken by Members City or Town Board.....	937
Duty of Assessor and Collector to Make Lists of Personal Property, etc.	924	Duty of Assessor and Collector in Regard to Collection of Taxes	938
Unrendered Property Shall Be Ascertained, etc., by Assessor..	925	Property of Taxpayer Shall Be Levied on and Sold for Taxes, When	939
Assessment for Back Taxes in Cities and Towns.....	926	Assessor and Collector Shall Make Deed to Purchaser to Property Sold for Taxes; Effect of Deed, Right of Redemption, etc.	940
Appointment and Duties of Board of Equalization in Cities and Towns	927	Sale May Take Place at Another Time Than That First Advertised, When, and May Be Continued from Day to Day.....	941
Annual Meetings of Board in Cities and Towns.....	928	Property Shall Be Struck Off to City, When	942
Board of Equalization in Cities and Towns Shall Value Property	929	Certain Provisions of General Tax Law Applicable Except, etc.	943
Value of All Property to Be Equalized by Board.....	930	Property of Infant, etc., May Be Rendered, When	944
Unrendered Property List in Cities and Towns to Be Examined by Board.....	931	Redemption of Lands Sold for Taxes by Cities or Towns.....	945
Board Shall Give Written Notice to Property Owners.....	932	City Taxes, etc., Collectible in Current Money Only.....	946
Duty of Board to Lower Values, When	933		

920. Power of City Council to Provide for Collection of Taxes.—

The city council may and shall have full power to provide, by ordinance, for the prompt collection of all taxes assessed, levied and imposed under this title, and due or becoming due to said city, and are hereby authorized, and to that end may and shall have full power and authority to sell, or cause to be sold, real as well as personal property, and may and shall make all such rules and regulations, and ordain and pass all ordinances, as they may deem necessary to the levying, laying, imposing, assessing and collecting of any of the taxes herein provided. [R. S., Art. 938.]

See Chap. 6, Title 22, R. S. as to the powers of cities and towns to levy taxes, etc.

The weight of authority seems to be that when a statute does not provide an exclusive remedy for the collection of taxes, they may be enforced by suit. *Cave v. City of Houston*, 65 Tex. 619.

The city of Austin may institute suit for taxes due it at any time after the day set apart by ordinance for sale of such property for taxes. *Nalle v. City of Austin (Civ. App.)*, 42 S. W. 780.

Though realty was offered for sale for an amount in excess of taxes legally due, yet the city might bring suit for the amount due. *Id.*

An ordinance of the city of Beaumont giving power to any court of competent jurisdiction to entertain a suit to foreclose the tax lien was enacted without authority and is inconsistent with the statute. *Bordages v. Higgins*, 1 C. A. 43, 19 S. W. 446, 20 S. W. 184, 726.

The power granted by a city to prosecute suits for taxes due it is valid, and not in violation of the constitution. *Nalle v. City of Austin (Civ. App.)*, 42 S. W. 780.

Under Galveston City Charter, pars. 54, 56, 60, 61, held, that preparation of certain lists and direction to city attorney to file suit for taxes was not a condition precedent to the institution of such suit by the city. *Brummer v. City of Galveston*, 97 Tex. 93, 76 S. W. 428.

In an action by a city to collect taxes, plaintiff was required to show prima facie a valid levy and assessment, and that the taxes were due and unpaid. *City of Houston v. Stewart*, 40 C. A. 499, 90 S. W. 49.

Under provisions of a city charter making tax rolls prima facie evidence of certain facts, held not necessary for the city to do more than introduce the tax rolls in order to make out its case. *Id.*

A city charter, providing that a taxpayer might rely on the four-year statute of limitations in any action for taxes alleged to be due the city, was valid except as to suits pending at the time it was passed, and with the qualification that a reasonable time must be allowed the city in which to institute suits for taxes prior to its passage. *City of Houston v. Stewart*, 40 C. A. 499, 90 S. W. 49.

A taxpayer, sued by a city claiming to have a population of over 10,000 for taxes levied under the authority conferred on cities of over 10,000, held not entitled to raise the question whether it has 10,000 inhabitants. *City of Tyler v. Tyler Building & Loan Ass'n*, 98 Tex. 69, 81 S. W. 2.

In a suit by a city to recover taxes, taxpayer could not defend on the ground that the city had less than 10,000 inhabitants, and hence had not power to levy the tax. *City of Tyler v. Tyler Building & Loan Ass'n (Civ. App.)*, 82 S. W. 1066.

A city may compromise and settle taxes due to it for general purposes by accepting therefor a deed of land for a road. *Ostrum v. City of San Antonio*, 30 C. A. 462, 71 S. W. 304.

Where a city is given the right by its charter to sue for taxes, it is entitled to judgment both against the person and the property. *Berry v. City of San Antonio (Civ. App.)*, 46 S. W. 273.

The statute requires only that notices of sales pursuant to judgment obtained by a city for taxes be mailed to the property owner, not that they be received by him. *Ross v. Drouilhet*, 34 C. A. 327, 80 S. W. 241.

Restraining collection. See Title 69.

Assessment and collection of taxes in general. See Title 126.

The city council of an incorporated city may fix a date upon which the municipal tax shall become due and delinquent, different from the date upon which the general taxes become due and delinquent. Ruling of Attorney General, p. 634, 1912-14.

921. Power of City Council to Regulate Tax Lists, Assessment of Taxes, Etc.—The city council shall have power, by ordinance, to regulate the manner and mode of making out tax lists or inventories and appraisements of property therein, and to prescribe the oath that shall be administered to each person on such rendition of property, and to prescribe how and when property shall thus be rendered, and to prescribe the number and form of assessment rolls, and fix the duties and define the powers of the assessor and collector, and adopt such measures as they may deem advisable to secure the assessment of all property within the limits of said city, and collect the tax thereupon; and may by ordinance provide that any person, firm or corporation having property subject to taxation or being liable for any tax under the provisions of this title, and neglecting to render a list, inventory and appraisal thereof, as required by ordinance of said city, shall be liable to fine and imprisonment. [R. S., Art. 939.]

Const. Art. 8, par. 5, declares that all railroad property within the limits of any city shall bear its proportionate share of municipal taxation, and, if not previously rendered, the city authorities shall have power to require its rendition and collect the usual municipal tax thereon. Section 8 declares that property of railroad companies shall be assessed and taxes collected in the several counties in which the property is situated, including so much of the roadbed and fixtures as shall be in each county; and that the rolling stock shall be assessed in gross in the county where the principal office of the company is located, and the county tax paid on it shall be apportioned by the Comptroller in proportion to the distance the road may run through any such county among the several counties through which the road passes, as a part of their assets. Held that, under Art. 7525, providing for the general taxation of the rolling stock of railroad corporations, and this article, a city containing the principle office of a railroad company was not, for that reason, authorized to levy municipal taxes on all the railroad's rolling stock, only a small portion of which would necessarily be within the city on the 1st day of January of each year; the term "lying or being within the limits of any city or incorporated town," etc., when applied to tangible movable property, meaning only such property as is actually and physically within the limits of the city. *City of Tyler v. Coker* (Civ. App.), 124 S. W. 729.

922. Duty of Taxpayers to Render Inventory of Property, Etc.—Every person, partnership and corporation owning property within the limits of the corporation shall, within two months after

published notice, hand in to the assessor and collector of the city a full and complete inventory of the property possessed or controlled by him, her or them within said limits not exempt from taxation, on the first day of January of the current year, verified as required by ordinance; and any person failing or refusing to comply with the provisions of this article shall be liable to fine and imprisonment, and the city council shall, by ordinance, clearly define the duties of taxpayers herein, and make all necessary rules and regulations to secure the rendition of property and the collection of taxes due thereon. [R. S., Art. 940.]

Land included within city limits after January 1st, though before the assessment of taxes for the year, is not subject to such taxes. *City of Austin v. Butler* (Civ. App.), 40 S. W. 340.

An assessment is not void on account of a latent ambiguity in the list furnished by the owner. *Eustis v. City of Henrietta* (Civ. App.), 37 S. W. 632.

A taxpayer cannot complain that an assessment is defective in describing the property where the form of description furnished by him was followed. *Scollard v. City of Dallas*, 16 C. A. 620, 42 S. W. 640; *Moody v. City of Galveston*, 21 C. A. 16, 50 S. W. 481.

Where an assessor includes in his assessment property not owned by the citizen, or a greater amount than is taxable, the latter is entitled to relief, though he did not render his property as provided by the statute. *Moody v. City of Galveston*, 21 C. A. 16, 50 S. W. 481.

Where the statute requires taxpayers to render inventory of their property, it will be presumed a taxpayer furnished the description on the tax roll. *Turner v. City of Houston*, 21 C. A. 214, 51 S. W. 642.

Railroad company, whose agent rendered its property for taxation, held not entitled to take advantage of rendition not being in statutory form. *Galveston & W. Ry. Co. v. City of Galveston*, 33 C. A. 384, 77 S. W. 269.

923. Assessor and Collector, Powers, Duties, Bond, Etc.—The assessor and collector shall make up the assessment of all property taxed by the city, and make duplicate rolls thereof, and, on completion of the rolls, shall deliver one of them to the city secretary. He shall collect all taxes due the city, and in the event of non-payment of any taxes, shall proceed to sell the property to raise the amount of taxes so due; and shall, in the performance of his duties, observe the provisions of this title, and the ordinances of the city relating thereto. He shall give bond, in such amount and in such form as the city council may prescribe, with good and sufficient sureties; and the city council may require a new bond whenever, in their opinion, the existing bond is insufficient; and whenever such bond is required, he shall perform no official act until said bond shall be given and approved. He shall, at the expiration of every week, pay to the treasurer all money by him col-

lected, and shall report to the city council, at the first meeting in every month, all moneys so collected and paid; and he shall perform all such other duties, and in such manner and according to such rules and regulations as the city council may prescribe. The assessor and collector is authorized to require the owners of all property subject to taxation to render a correct account of the same, under oath, to be administered by him. The assessor and collector shall receive such fees and commissions for his services as may be allowed by the ordinances of the city. [R. S., Art. 941.]

Bond less onerous than that prescribed by statute, but in accordance with it so far as its provisions went, was held to be valid. *City of Hallettsville v. Long*, 11 C. A. 180, 32 S. W. 567.

The sureties are not released from liability by the misrepresentations of the municipal officers, etc. *City of Hallettsville v. Long*, 11 C. A. 180, 32 S. W. 567.

City assessor may recover his proportionate share of the compensation for assessing and collecting taxes, where the collection was made by his successor. Sufficiency of the petition. *El Paso v. Ashford*, 22 S. W. 177, 3 C. A. 378.

The commission fixed by ordinance as compensation for the office of tax assessor and collector must be prorated between two persons performing the work. *City of Cameron v. Moore* (Civ. App.), 142 S. W. 964.

Ordinances of the city of San Antonio requiring the tax roll furnished to the collector to describe the property by lot and block, and state the value of each parcel separately, does not apply to the assessment. *Guerquin v. City of San Antonio*, 19 C. A. 98, 50 S. W. 140.

Where the board of appraisers approved the valuation of the assessor, a taxpayer cannot complain that it was the board's duty to place the valuation, and not the assessor's. *Moody v. City of Galveston*, 21 C. A. 16, 50 S. W. 481.

It is not required that the separate value of each piece of personal property should be given in the assessment either by statute or the charter of the city of San Antonio. *Wright v. City of San Antonio* (Civ. App.), 50 S. W. 406.

Tax rolls are sufficient evidence that taxes were levied by a city. *Earle v. City of Henrietta* (Civ. App.), 41 S. W. 727; *Homes v. Same*, Id. 728.

924. Duty of Assessor and Collector to Make Lists of Personal Property, Etc.—It shall be the duty of the assessor and collector to make out a list of all personal property which has not been given in for assessment according to the provisions of this title, and assess the same in the name of the owner, if he be known; if not, then it shall be assessed by description of the property and as unknown owner; and the value of such property shall be determined by the board of equalization, and the same may be sold as in the other cases, if the tax be not paid in the time prescribed by law. [R. S., Art. 942.]

925. Unrendered Property Shall Be Ascertained, Etc., by Assessor.—It shall be the duty of the assessor and collector, at the expiration of the time fixed by ordinance for the rendition of property, to ascertain such property in the city subject to taxation as has not been rendered; and the same shall be by him presented to the board of equalization for valuation by said board; and the same shall be by him entered in a supplement to the assessment roll as unknown, specifying the year for which said tax is not paid within the time prescribed by law; said property shall be sold at the same time and with like effect as other property. [R. S., Art. 943.]

Where city assessment roll has been substantially completed before levy of a tax, the fact that property not reported is afterwards added to the roll does not invalidate the tax. *Scollard v. City of Dallas*, 16 C. A. 620, 42 S. W. 640.

926. Assessment for Back Taxes in Cities and Towns.—Whenever the assessor and collector shall ascertain that any taxable property, real or personal, has not been assessed for the past year, he shall assess the same in a supplement to his next assessment roll, at the same rate under which such property should have been assessed for such year, stating the year for which such property should have been assessed; and the taxes thereon shall be collected in the same manner as other assessments. In all cases where any party has omitted to render property for taxation for any former year or years, and such taxes have not been paid, such party shall give such property in for assessment for the years thus omitted and pay such taxes; and the assessor and collector shall enter all such property in a supplement to his next assessment roll, under the head of payments for former years. [R. S., Art. 944.]

927. Appointment and Duties of Board of Equalization in Cities and Towns.—The city councils of the several cities and towns of this State incorporated under the general laws shall annually, at their first meeting, or as soon thereafter as practicable, appoint three commissioners, each being a qualified voter, a resident and property owner of the city or town for which he is appointed, who shall be styled the board of equalization; and at the same meeting said council shall, by ordinance, fix the time for the meeting of such board of equalization. [R. S. Art. 945.]

Acts of members of a city board of equalization having held over after their term held valid as the acts of a de facto board. *Nalle v. City of Austin*, 41 C. A. 423, 93 S. W. 141.

928. Annual Meetings of Board in Cities and Towns.—The board of equalization shall convene annually, at the time fixed by the

city council, to receive all the assessment lists or books of the assessor of their city, for examination, correction, equalization, appraisal, and approval; and at all meetings of said board the city secretary shall act as secretary thereof. [R. S., Art. 946.]

929. Board of Equalization in Cities and Towns Shall Value Property.—The board of equalization shall cause the assessor to bring before them at the time fixed for the convening of said board, all the assessment lists or books of the assessor of their city, for their examination, that they may see if each and every person has rendered his property at a fair market value; and said board shall have power to send for persons and papers, to swear and qualify persons who testify, to ascertain the value of such property; and, if they are satisfied it is too high, they shall lower it to its proper value; and, if too low, they shall raise the value of such property to a proper figure. Said board shall also have power to correct any errors that may appear on the assessor's lists or books. [R. S., Art. 947.]

930. Value of All Property to Be Equalized by Board.—The board of equalization shall equalize as near as possible the value of all the improved lots within the corporate limits of their city, having reference to the size and location of said lots and the improvements thereon, and shall equalize the value of unimproved lots as near as possible, having reference to the size and location thereof, and all other property of the same kind shall be made as nearly equal as possible. Any person may file with said board at any time before the final action of said board a complaint as to the assessment of his or any other person's property, and said board shall hear said complaint; and said complainant shall have the right to have witnesses summoned in sustaining said complaint as to the insurance on said property, or the rents and profits it may bring the holder thereof. [R. S., Art. 948.]

931. Unrendered Property List in Cities and Towns to Be Examined by Board.—The city assessor, at the same time that he delivers to said board his lists and books, as provided in Article 929, shall also furnish to said board a certified list of the names of all persons who either refuse to swear or qualify or to sign the oath or affirmation as required by law, together with a list of the property of such persons situated within the corporate limits of their city, as made by him through other information; and said board shall examine said lists and appraise the property so listed by the assessor. [R. S., Art. 949.]

932. Board Shall Give Written Notice to Property Owners.—In all cases where the board of equalization shall find it their duty

to raise the value of any property appearing on the lists or books of the assessor, they shall, after having fully examined such lists or books and corrected all errors appearing therein, adjourn to a day not less than ten nor more than fifteen days from the date of adjournment, such day to be fixed in the order of adjournment, and shall cause the secretary of said board to give written notice to the owner of such property or to the person rendering the same of the time to which said board may have adjourned, and that such owner or person rendering said property may at that time appear and show cause why the value of said property should not be raised; which notice may be served by depositing the same, properly addressed and postage paid, in the city postoffice. [R. S., Art. 950.]

933. Duty of Board to Lower Values, When.—The board of equalization shall meet at the time specified in said order of adjournment, and shall hear all persons the value of whose property has been raised, and, if said board is satisfied they have raised the value of such property too high, they shall lower the same to its proper value. [R. S., Art. 951.]

The remedy against a fraudulent assessment by the assessor is to review the assessment before the board of appraisers. *Moody v. City of Galveston*, 21 C. A. 16, 50 S. W. 481.

934. Approval of Lists and Rolls by Board of Equalization.—The board of equalization, after they have finally examined and equalized the value of all property on the assessor's lists or books, shall approve said lists or books and return them, together with the lists mentioned in Article 931, that he may make up therefrom his general rolls as required by law; and, when said general rolls are so made up, the board shall meet again to examine said rolls and approve the same, if found correct. [R. S., Art. 952.]

935. Action of Board of Equalization of Cities and Towns Final.—The action of said board at the meeting provided for in Article 933 shall be final, and shall not be subject to revision by said board or by any other tribunal thereafter. [R. S., Art. 953.]

Under the charter of the city of Austin (Section 41), the decision of the county court on appeal from the board of equalization is final. *Scottish-American Mortg. Co. v. Board of Equalization of City of Austin* (Civ. App.), 45 S. W. 757.

An objection to the payment of the tax can not be made on the ground only that there is no proper board of appeals to pass upon objections to assessments. *Scollard v. City of Dallas*, 16 C. A. 620, 42 S. W. 640.

Where it did not conclusively appear that a city board of equalization abused its discretion in fixing the valuation of certain property, the action of the board would not be disturbed. *Linz v. City of Sherman* (Civ. App.), 62 S. W. 71.

936. Compensation of Board of Equalization in Cities and Towns.—The members of the board of equalization and the city secretary, while acting as secretary of said board, shall receive such compensation for their services, to be allowed by the city council, as said council may deem just and reasonable. [R. S., Art. 945.]

937. Oath to Be Taken by Members of City or Town Board.—Before said board shall enter upon their duties, they shall be sworn, by any officer authorized by law to administer oaths, to faithfully and impartially discharge all duties incumbent upon them by law as such board. [R. S., Art. 955.]

938. Duty of Assessor and Collector in Regard to Collection of Taxes.—The assessor and collector, after the completion of the assessment roll, as required by ordinance, shall proceed to collect the taxes therein mentioned within the time, and give such notice as may be prescribed by the city council, and for that purpose shall call once upon every person taxed, or on the agent or attorney of such person at the usual place of his or her residence, office, place of business, or elsewhere, and demand the payment of the tax charged upon his or her person or property, if the person is to be found, and if not, then a written demand, specifying the amount of taxes due, left at the residence with some adult member of the family, shall be a sufficient demand; provided, that if any person thus owing taxes has no residence, office or place of business, and no agent in the city or known to the assessor and collector, then the said demand shall not be necessary, and the ordinary published notice required by ordinance shall be sufficient. [R. S., Art. 956.]

939. Property of Taxpayer Shall Be Levied On and Sold for Taxes, When.—If any person shall fail, neglect or refuse to pay the taxes imposed on him and his property, within the time prescribed by the ordinances of said city, the assessor and collector shall, by virtue of his tax list and assessment roll, levy upon so much property liable to taxation belonging to such person as may be sufficient to pay his taxes; and the assessor and collector shall give notice of the time and place of sale by advertisement in writing (if not unknown property), the property and amount of taxes, costs and fees due thereupon; such notice shall be published in some newspaper published in said city; and at the expiration of such notice, and on the day therein specified, the assessor and collector shall proceed to sell such property at public auction, in front of the court house door of the city, or such building as may be used for such purpose; provided; that when real estate is offered for sale the smallest portion of grounds (to be taken from the east side of the premises)

shall be sold for which any person will take the same and pay the taxes, costs and fees. [R. S., Art. 957.]

See *Bordages v. Higgins*, 1 C. A. 43, 19 S. W. 446, 20 S. W. 184, 726; *Higgins v. Bordages* (Civ. App.), 28 S. W. 350.

Under this article, in connection with Art. 7613, the tax rolls are evidence of what taxes had been levied by the city council. *Homes v. City of Henrietta*, 91 Tex. 318, 42 S. W. 1052; *Id.* (Civ. App.), 41 S. W. 728.

The direction that the least portion of land on the east side of the tract should be sold need not be followed, if to do so would materially injure the remainder. *Bean v. City of Brownwood* (Civ. App.), 43 S. W. 1036.

940. Assessor and Collector Shall Make Deed to Purchaser to Property Sold for Taxes; Effect of Deed, Right of Redemption, Etc.—The assessor and collector shall, when any property has been sold for the payment of taxes, make, execute and deliver a deed for said property to the person purchasing the same, and such deed shall be prima facie evidence in all controversies and suits in relation to the right of the purchaser, his heirs and assigns, to the premises thereby conveyed, of the following facts:

First. That the land or lot or portions thereof conveyed was subject to taxation or assessment at the time the same was advertised for sale, and had been listed or assessed in the time or manner required by law.

Second. That the taxes or assessment were not paid at any time before the sale.

Third. That the land, lot, or portion thereof conveyed had not been redeemed from the sale at the date of the deed, and shall be conclusive evidence of the following facts:

1. That the land, lot, or portion thereof sold was advertised for sale in the manner and for the length of time required by law.

2. That the property was sold for taxes or assessments as stated in the deed.

3. That the grantee in the deed was the purchaser.

4. That the sale was conducted in the manner prescribed by law.

And in all controversies and suits involving the title to land claimed and held under and by virtue of such deed, the person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat said title, either that the land was not subject to taxation at the date of the sale, that the taxes or assessment had been paid, that the land had never been listed or assessed for taxation and assessment, as required by this title or some ordinance of the city, or that the same had been redeemed according to the provisions of this title, and that such redemption was made for the use and benefit of the person having the right of redemption under the law; but no person shall be permitted to

question the title acquired by the said deed without first showing that he, or the person under whom he claims title, had title to the land at the time of the sale, or that the title was obtained after the sale; provided, however, that the owner of such property shall have the right to redeem the same at any time within two years of the day and date of the sale thereof, upon paying to the purchaser double the amount of taxes for which the same was sold, together with the costs of such sale and double the amount of all taxes paid by the purchaser since such sale. The assessor and collector shall have full power to levy upon any personal property to satisfy any tax imposed by this title; all taxes shall be a lien upon the property upon which they are assessed, and, in case any property levied upon is about to be removed out of the city, the assessor and collector shall proceed to take into his possession so much thereof as will pay the taxes assessed and costs of collection. [R. S., Art. 958.]

In so far as this article makes the payment of taxes by the owner to the city, or to one who has purchased at a void sale or claims the property under a void deed, a condition precedent to his resisting the claim upon his property under such void proceeding, it is unconstitutional. *Eustis v. City of Henrietta*, 90 Tex. 468, 39 S. W. 567.

The requirement of the payment of taxes before making a defense against a void claim is unconstitutional. *Eustis v. Henrietta*, 91 Tex. 325, 43 S. W. 259.

The provisions of this article do not apply to a suit on a tax deed for land not described by it. *Ozee v. City of Henrietta*, 90 Tex. 334, 38 S. W. 768.

The levy of a tax is not proven by the recitals in the tax deed made by a municipal corporation. The ordinance passed by the city council is the proper proof. *Earle v. City of Henrietta*, 91 Tex. 301, 43 S. W. 15.

941. Sale May Take Place at Another Time Than That First Advertised, When, and May Be Continued From Day to Day.—If, from any cause, the sale of property levied upon or seized for taxes shall not take place at the time first appointed, the assessor and collector shall appoint some other time, give like notice, and proceed to sell such property in the manner prescribed in the first instance; and, in case said property levied upon or seized for taxes cannot be sold on the day advertised, such sale may be postponed from day to day until completed, of which postponement the assessor and collector shall give verbal notice at the expiration of sale each day. [R. S., Art. 959.]

942. Property Shall Be Struck Off to City When.—If, at any sale of real or personal property or estate for taxes, no bid shall be made for any parcel of land or any goods and chattels, the same shall be struck off to the city, and thereupon the city shall receive, in the corporate name, a deed for said property, and shall be vested

with the same right as other purchasers at such sale, and shall have power to sell and convey the same. [R. S., Art. 960.]

Purchaser of a city's interest in land under foreclosure of a tax lien held to acquire no interest therein, where the court had no jurisdiction of the owner in the foreclosure proceedings. *Scanlan v. Campbell*, 22 C. A. 505, 55 S. W. 501.

Where a city acquires property for taxes under invalid proceedings, subsequently set aside after the property has been sold to an innocent purchaser, the taxpayer may recover the value of the property from the city. *City of Houston v. Walsh*, 27 C. A. 121, 66 S. W. 106.

943. Certain Provisions of General Tax Law Applicable, Except, Etc.—The provisions of Chapter 13 of Title 126, in reference to the seizure and sale of real estate and personal property for taxes, penalties and costs due thereon, shall apply as well to collectors of taxes for towns and cities as for collectors of taxes for counties and collectors of taxes for cities and towns shall be governed, in selling real and personal property, by the same rules and regulations in all respects as to time, place, manner and terms and making deeds, as are provided for collectors of taxes for counties except as in this chapter otherwise provided. [R. S., Art. 961.]

The law governing county collectors shall govern city collectors also. *Eustis v. Henrietta*, 91 Tex. 325, 43 S. W. 259.

This article makes the provisions of Chapter 13, Title 126, in reference to the seizure and sale of real estate and personal property for taxes, penalties and costs due thereon applicable to cities and towns. It expressly limits its applicability to the seizure and sale. *People's Nat. Bank v. City of Ennis* (Civ. App.), 50 S. W. 632.

The fact that a city was incorporated under the general incorporation act held not to defeat its right to maintain an action to foreclose a tax lien. *Grace v. City of Bonham*, 26 C. A. 161, 63 S. W. 158.

Description of property in an assessment as "store, S. Fourth and Mary Sts.," owned by "Moore Bros.," held sufficient in action to enforce a lien for the taxes. *Cooper Grocery Co. v. City of Waco*, 30 C. A. 623, 71 S. W. 619.

944. Property of Infant, Etc., May Be Redeemed, When.—If the real estate of an infant, feme covert, or lunatic be sold under this title, the same may be redeemed at any time within one year after such disability be removed. [R. S., Art. 962.]

945. Redemption of Lands Sold for Taxes by City or Town.—All lands sold under and by virtue of decree and judgment of court, for taxes due any incorporated city or town within this State, may be redeemed by the owner or owners thereof within two years from the date of deed, upon the payment to the purchaser, or his assigns, of double the amount so paid, including costs of court; provided, that purchaser at such foreclosure sale, and his assigns, shall not

be entitled to the possession of the property sold for taxes until the expiration of two years from the date of deed. [R. S., Art. 963.]

946. City Taxes, Etc., Collectible in Current Money Only.—Taxes levied to defray the current expenses of the city government, and all license and occupation taxes levied, and all fines, forfeitures, penalties and other dues accruing to cities, shall be collectible only in current money. [Const. Art. 11, Sec. 4; R. S., Art. 964.]

The provision of city charter that any person who shall purchase property incumbered with taxes shall take the property charged with a lien applies only to purchasers from a delinquent taxpayer, and not to a purchaser under a tax sale. *City of Houston v. Bartlett*, 29 C. A. 27, 68 S. W. 730.

Where a city, having two tax judgments on certain lots, sold under the last judgment without reserve, it thereby exhausted its security, and did not violate its charter, prohibiting the release of any tax. *City of Houston v. Bartlett*, 29 C. A. 27, 68 S. W. 730.

Where the collector of a city without authority employed a notary to take acknowledgments to tax deeds to the city, and the council accepted the deeds without objection, they ratified the employment, and the city was liable for the fees. *City of Dallas v. Martyn*, 29 C. A. 201, 68 S. W. 710.

That a city tax collector, in his receipt, states the payment of an assessment on lands to have been made under protest, does not affect the character of the payment as voluntary or involuntary, where the lands have already been sold under the law regarding delinquent taxpayers, and bought by the city, and the payment is afterwards made in pursuance of an agreement between the former owner and the city. *Galveston City Co. v. Galveston*, 56 Tex. 486.

A protest to be effective should refer specifically to property claimed to be illegally taxed, and not generally to property admitted to be legally taxed as well as the former. *Id.*

The payment of an illegal demand by a party with full knowledge of the facts, except in case of necessity, as to protest one's person or property, is deemed voluntary. *Id.*

Money collected as taxes by a city under an ordinance not authorized by its charter may be recovered by suit at law whether the tax was paid under compulsory process or not. Otherwise, if the money had been collected by the State authority, for want of power to sue the State. *City of Galveston v. Snyder*, 39 Tex. 236.

Payment of tax to prevent sale of land held voluntarily, though made under protest, and with notice of intention to sue for its recovery. *Davie's Ex'rs v. City of Galveston*, 16 C. A. 13, 41 S. W. 145; *Baldinger v. Same*, (Civ. App.), 41 S. W. 145.

An action will not lie for the recovery of taxes voluntarily paid. *Moller v. City of Galveston*, 23 C. A. 693, 57 S. W. 1116.

Evidence examined and held to justify a finding that a payment of back taxes by plaintiff to a city was voluntary. *Ostrum v. City of San Antonio*, 30 C. A. 462, 71 S. W. 304.

A lien cannot be foreclosed upon an entire piece of property when the taxes have been assessed upon a portion only. *Cave v. City of Houston*, 65 Tex. 619.

CHAPTER XXXI.

PROPERTY EXEMPT FROM TAXATION.

(Compiled from the Constitution, Revised Civil Statutes 1911 and Acts
Subsequent Legislature.)

	Sec.		Sec.
Farm Products Exempt from Taxation, When	947	United States Lands to Be Exempt from Taxation.....	957
Cemetery Lots Exempt from Forced Sale	948	Persons Exempt from Serving.....	958
Y. M. C. A. and Y. W. C. A. Buildings and Equipments Exempt from Taxation.....	949	Who Liable and Who Exempt from Road Duty.....	959
Buffalo and Catalo Exempt from Taxation	950	Exemption from Taxation.....	960
City Council May Provide for the Exemption of Property from Taxation, etc.	951	Cemeteries and Grounds Used for Burial of Dead.....	961
"Residence" Defined—May Secure Poll Tax Exemption, When, etc.	952	All Property Belonging to the State	962
Who Exempt from Payment of Poll Tax; When Paid; Receipt	953	All Buildings Belonging to Counties	963
Poll Tax, Who Not Required to Pay	954	Poor Farms and Poor Houses Belonging to Public.....	964
Homestead Exemption Does Not Apply, When	955	Property of Institutions of Purely Public Charity.....	965
Water-Users' Associations Incorporated Under United States Reclamation Act.....	956	Fire Engines and Apparatus.....	966
		Market Houses, Public Squares, etc.	967
		Public Libraries and Property of Same	968
		Furniture Not Exceeding \$250.00 in Value	969
		Annual Pensions Granted by State or United States.....	970

947. Farm Products Exempt From Taxation, When.—Farm products in the hands of the producer, and family supplies for home and farm use, are exempt from all taxation until otherwise directed by a two-thirds vote of all the members-elect to both Houses of the Legislature [Const., Sec. 19, Art. 8, adopted election first Tuesday in September, 1879, proclamation October 14, 1879.]

NOTE.—The above provision of the Constitution was omitted from Chapter 1 of this book, as being more appropriate for the Chapter on Exemptions.

948. Cemetery Lots Exempt From Forced Sale.—The cemetery lots which have, and may hereafter be laid out and sold for said city for private places of burial shall, with their appurtenances, be forever exempt from taxes, executions, attachments or forced sales. [R. S., Art. 767.]

949. Y. M. C. A. and Y. W. C. A. Buildings and Equipments Ex-

empt From Taxation.—Young Men's Christian Association buildings and Young Women's Christian Association buildings, used exclusively for the purpose of furthering religious work, and acting under the approval and co-operation of the State and International Young Men's Christian Association committees and the Young Women's Christian Association committees, the books and furniture contained in such buildings, and the grounds attached thereto necessary for the proper occupancy of such buildings, use and enjoyment of the same, and not leased or otherwise used with a view to profit other than for the purpose of maintaining the buildings and association, and all endowment funds of the above mentioned religious institutions, not used with a view to profit, but for the purpose of maintaining the association and buildings in doing religious work, shall be exempt from taxation. [Acts 1913, p. 153.]

950. Buffalo and Catalo Exempt From Taxation.—That all buffalo and all catalo now in captivity in the State of Texas, by whomsoever owned, where such animals are kept and used for experimental purposes in crossing same with cattle for the purpose of producing a better strain of beef animals, or where such animals are kept in parks to preserve the species, and not for profit, but for the pleasure of their owners and the general public, they shall be exempt from taxation. [Accts 1917, p. 384.]

951. City Council May Provide for the Exemption of Property From Taxation, Etc.—The city council may, by ordinance, provide for the exemption from taxation of such property as they may deem just and proper; provided, nothing contained in this chapter on taxation shall be construed to prevent the city council from imposing, levying and collecting special taxes and assessments for the improvement of the avenues, streets and alleys, as hereinafter provided. [R. S., Art. 936.]

The Legislature never having conferred upon the city of Austin the power to exempt any property which it was authorized to tax, a contract with a private company exempting it from taxation in consideration of its establishing gas works and furnishing the city with gas at a reduced price, in so far as it exempted to give the exemption claimed is void. This would violate the rule as to uniformity. *Austin v. Gas Co.*, 69 Tex. 180. 7 S. W. 200.

952. "Residence" Defined—May Secure Poll Tax Exemption, When, Etc.—The "residence" of a single man is where he usually sleeps at night; that of a married man is where his wife resides, or if he be permanently separated from his wife, his residence is where he sleeps at night; provided, that the residence of one who is an inmate or officer of a public asylum or eleemosynary insti-

tute, or who is employed as a clerk in one of the departments of government at the capital of this State, or who is a student of a college or university, unless such officer, clerk, inmate or student has become a bona fide resident citizen in the county where he is employed, or is such student, shall be construed to be where his home was before he became such inmate or officer in such eleemosynary institution or asylum or was employed as such clerk or became such student; and, if on payment of his poll tax he would be a qualified voter, he shall be permitted to return during the month of January in each year to his home to pay his poll tax or obtain his certificate of exemption, and shall be permitted to return again to his home to vote at any general or primary election. The inmates of the Confederate Home, situate within the limits of the city of Austin, shall, after obtaining their certificates of exemption, be entitled to vote for State, district, municipal and county officers. [R. S. Art. 2941.]

See *Davis v. Riley* (Civ. App.), 154 S. W. 314.

A married man living with his wife may be an actual settler on school lands, though his wife does not actually reside with him thereon, if the separation is merely temporary, and both intend at the earliest practicable moment permanently to reside thereon as their home. *Shesser v. Baughman*, 22 C. A. 435, 55 S. W. 134.

Under this article, if an unmarried man has a room or habitation to which he usually returns, and where he usually sleeps at such times when he is not actively engaged in work elsewhere, his voting residence is in the precinct where such room or habitation is located. *Linger v. Balfour* (Civ. App.), 149 S. W. 795.

953. Who Exempt from Payment of Poll Tax; When Paid; Receipt.—The poll tax required by the Constitution and laws in force shall be collected from every male person between the ages of twenty-one and sixty who resided in this State on the first day of January preceding its levy, Indians not taxed, persons insane, blind, deaf or dumb and those who have lost a hand or foot, or permanently disabled, excepted; which tax shall be collected and accounted for by the tax collector each year and appropriated as required by law. It shall be paid at any time between the first day of October and the first day of February following; and the person, when he pays it, shall be entitled to his poll tax receipt, even if his other taxes are unpaid. [R. S. Art. 2942.]

954. Poll Tax, Who Not Required to Pay.—Every male person who is more than sixty years old or who is blind or deaf and dumb, or is permanently disabled, or has lost one hand or foot, shall be entitled to vote without being required to pay a poll tax, if he

has obtained his certificate of exemption from the county collector when the same is required by the provisions of this title. [R. S. Art. 2943.]

One who kept a cold drink stand waited on his customers, could put soda water bottles in his ice box, assort them, get the right article called for and give the right change, is not blind or permanently disabled within the meaning of the election law. *McCormick v. Jester*, 53 C. A. 306, 115 S. W. 283.

955. Homestead Exemption Does Not Apply, When.—The exemption of the homestead provided for in this chapter shall not apply where the debt is due:

1. For the purchase money of such homestead or a part of such purchase money.

2. For taxes due thereon.

3. For work and material used in constructing improvements thereon; but in this last case such work and material must have been contracted for in writing, and the consent of the wife, if there be one, must have been given in the same manner as is by law required in making a sale and conveyance of the homestead. [Const. Art. 16, Sec. 50; R. S. Art. 3792.]

956. Water-Users' Associations Incorporated Under United States Reclamation Act; No Charter Fees or Franchise Taxes.—

Whereas, the Congress of the United States has set apart certain funds arising from the sale of public lands of the United States, for the reclamation of arid land in certain States of the Union, by the construction of reservoirs and irrigation works therein; and,

Whereas, by special act of the Congress of the United States, the benefits of such reclamation act have been extended to the State of Texas; and,

Whereas, by the terms of such act the beneficiaries thereunder are required to refund to the government the cost of such works, and under the regulations of the department of the interior the farmers applying for water from such irrigation works are required to incorporate themselves into water-users associations, having an authorized capital equivalent to their debt to the United States Government, such capital stock being appurtenant to the land and representing the mortgage placed upon the land to reimburse the government the cost of the irrigation works;

Now, therefore, be it enacted that water-users associations, incorporated under the terms of the United States reclamation act, approved June 17, 1902, and the regulations of the United States Department of the Interior, made in pursuance of such act, or-

ganized and carried on for the purpose of enabling citizens and residents of this State to avail themselves of the benefits of said reclamation act, shall not be subject to the laws of this State relating to charter fees and franchise taxes. [Acts 1911, p. 42, Sec. 1.]

Property of an irrigation district organized by the commissioners' court is exempt from taxation. Constitution, Sections 1 and 2, Article 3; and Chapter 172, Acts of the Thirty-third Legislature. Ruling of Attorney General, p. 657, 1914-16.

957. United States Lands to Be Exempt from Taxation.—The United States shall be secure in their possession and enjoyment of all lands acquired under the provisions of this title; and such lands and all improvements thereon shall be exempt from any taxation under the authority of this State so long as the same are held, owned, used and occupied by the United States for the purposes expressed in this title, and not otherwise. [R. S. Art. 5277.]

The right of the government to take the property of an individual for public use stated. *Galveston, H. & S. A. Ry. Co. v. De Groff* (Civ. App.), 110 S. W. 1006.

Eminent domain defined. *City of Austin v. Nalle*, 102 Tex. 536, 120 S. W. 996.

The right of eminent domain is inherent in the Legislature, and is impliedly reserved in all dedications and grants. *Imperial Irr. Co. v. Jayne*, 104 Tex. 395, 138 S. W. 575.

Eminent domain is the right of power of a sovereign State to appropriate private property for the promotion of the general welfare. The power is an attribute of government and is inherent in it, and embraces all cases where the property of the individual is taken without his consent by such sovereign power. *Byrd Irr. Co. v. Smythe* (Civ. App.), 146 S. W. 1064.

The power of eminent domain is the right of the sovereign to take private property for public uses. *Crawford v. Frio County* (Civ. App.), 153 S. W. 388.

Limitation on power of eminent domain, requiring adequate compensation, held not to restrict the proper employment of the police power. *Houston & T. C. Ry. Co. v. City of Dallas*, 98 Tex. 396, 84 S. W. 648, 70 L. R. A. 850.

Police regulations do not constitute a taking under the right of eminent domain. *Hatcher v. City of Dallas* (Civ. App.), 133 S. W. 914.

The purpose of the constitutional provision prohibiting the damaging or destroying of private property for a public use without compensation was to place public, or quasi public, corporations upon the same basis with private persons as to liability for such injuries. *Heilbron v. St. Louis Southwestern Ry. Co. of Texas*, 52 C. A. 575, 113 S. W. 610, 979.

In a constitutional provision requiring compensation before taking of property for public use, the terms "property" and "taken" defined. *McCammon & Lang Lumber Co. v. Trinity & B. V. Ry. Co.*, 104 Tex. 8, 133 S. W. 247, 36 L. R. A. (N. S.) 652, Am. Cas. 1913 E. 870.

The right of eminent domain conferred by law on an individual or a corporation can be exercised only by the strictest adherence to the terms

of the grant. *Byrd Irr. Co. v. Smythe* (Civ. App.), 146 S. W. 1064.

Grants of power of eminent domain are strictly construed, and methods set forth in the statute granting the power must be strictly followed. *Reitzer v. Medina Valley Irrigation Co.* (Civ. App.), 153 S. W. 380.

The delegated power of eminent domain can only be expressly conferred by statute, and such statutes are construed strictly in favor of the owner of the condemned property. *Crawford v. Frio County* (Civ. App.), 153 S. W. 388.

The right to take private property for a public use may only be exercised under the protection of a legislative grant and under the conditions attached thereto. *Southern Kansas Ry. Co. of Texas v. Vance* (Civ. App.), 155 S. W. 696.

The right of eminent domain does not exist as to public land. *Imperial Irr. Co. v. Jayne*, 104 Tex. 395, 138 S. W. 575.

Private property cannot be taken or damaged for public use without compensation. *Heilbron v. St. Louis Southwestern Ry. Co. of Texas*, 52 C. A. 575, 113 S. W. 610, 979.

Under the Constitution, a city held not entitled to collect an assessment for benefits resulting from a street improvement without showing that adequate compensation will be made for the assessment, by showing that the improvement will be put in within a reasonable time. *City of Austin v. Nalle* (Civ. App.), 115 S. W. 126.

A municipal corporation is liable for lands taken for, and damages caused by, the construction of a public improvement, though the contract under which the improvement was constructed was void. *Harrison v. City of Sulphur Springs* (Civ. App.), 50 S. W. 1064.

Where a city permanently occupied land by turning the channel of a ditch over it, the owner was entitled to the value of the land so taken under Const. Art. 1, 17. *Harrison v. City of Sulphur Springs* (Civ. App.), 67 S. W. 515.

To constitute a damaging of private property within the constitutional provision prohibiting the damaging of private property for public use without compensation, there must be an interference with its free use and enjoyment, resulting in some physical inconvenience, discomfort, or detriment. *Heilbron v. St. Louis Southwestern Ry. Co. of Texas*, 52 C. A. 575, 113 S. W. 610, 979.

A property owner is not bound to keep his premises attractive, or to refrain from making them unattractive or offensive to the aesthetic sense of his neighbors, so long as his use thereof does not interfere with their use of their own property. *Id.*

Where damage to real property is permanent so that the depreciation in its market value constitutes the measure of damages, recovery may be had for prospective as well as present injuries. *Id.*

Where injuries to a public highway were not permanent, but were capable of being remedied by the wrongdoer or others interested in the highway, abutting owners could not recover for prospective injuries to the property, based upon the depreciation in its market value. *Id.*

An owner of land, part of which is condemned, is entitled to the market value of the portion taken and the depreciation in value of that not taken, even if the remainder is enhanced in value. *Ft. Worth Improvement Dist. No. 1 Tarrant County v. Weatherred* (Civ. App.), 149 S. W. 550.

Special benefits to property injured by the construction of public works

held available as an offset against any damages. *Burton Lumber Corp. v. City of Houston*, 45 C. A. 363, 101 S. W. 822.

An owner seeking damages for the maintenance of public work, not encroaching on the half of the street lying next to his property held required to submit to a deduction for special benefits accruing from the works. *Id.*

958. Persons Exempt from Serving as Overseers, When.—No person shall be compelled to serve as an overseer who is lawfully exempt from road duty, nor shall any one be compelled to serve as overseer more than one year in every three successive years. [R. S. Art. 6913.]

959. Who Liable and Who Exempt from Road Duty.—All male persons between the ages of eighteen and forty-five years shall be liable, and it is hereby made their duty, to work on, repair and clean out the public roads, under provisions and regulations of this title, except ministers of the gospel in the active discharge of their ministerial duties, invalids, members of the Texas National Guard organized under provisions of the title "Militia," and the members of all volunteer fire companies in the active discharge of their duties as firemen, who shall be exempt. [R. S. Art. 6919.]

This article is an amendment of Art. 854 and simply affects the limitation upon the age of the party liable to work the road. *Ex parte Drake*, 55 Cr. R. 233, 116 S. W. 50.

960. Exemption from Taxation.—The following property shall be exempt from taxation, to-wit:

1. **Public School Houses and Houses of Worship.**—Public schoolhouses and houses used exclusively for public worship, the books and furniture therein and the grounds attached to such buildings necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit. All public colleges, public academies, all buildings connected with the same, and all the lands immediately connected with public institutions of learning, and all endowment funds of institutions of learning and religion not used with a view to profit, and when the same are invested in bonds or mortgages, or in land or other property which has been, or shall hereafter be, bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages; provided, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer; and all buildings used exclusively and owned by persons or associations of persons for school purposes. This provision shall not extend to

leasehold estate of real property held under authority of any college or university of learning. [R. S. Art. 7507, Subdiv. 1.]

An act of the Legislature which attempts to define institutions of purely public charity as one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds property and assets of such institutions are placed and bound by its laws to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons, is an unwarranted attempt on the part of the Legislature to construe and alter the provisions of the Constitution, and is void.

The subsequent adoption of the constitutional provision does not validate or make operative an unconstitutional statute. Ruling of Attorney General, p. 619, 1914-16.

Under Art. 7507 R. S. property of a church used solely for religious purposes, and not with a view of profit, is not subject to taxation. *State v. Methodist Church* (T. C. A.), 163 S. W. 628.

Property used exclusively for religious purposes but not owned by the religious society, being rented by them from the owner, is not exempt from taxation under R. S. Art. 7507, Sec. 1. *City of Dallas v. Cochran* (T. C. A.), 166 S. W. 32.

The "Houston Plan of Taxation" which allows land, stocks of merchandise, etc. to be taxed at a certain per cent of their value, while money, mortgages and other personal property were exempt from taxation, is in violation of the Constitution Art. 8, Sec. 1-2, requiring taxes to be equal and uniform. *City of Houston v. Baker* (T. C. A.), 178 S. W. 820.

961. Cemeteries and Grounds Used for Burial of Dead.—All lands used exclusively for graveyards or grounds for burying the dead, except such as are held by any person, company or corporation with a view to profit, or for the purpose of speculating in the sale thereof. [R. S. Art. 7507, Subdiv. 2.]

962. All Property Belonging to the State.—All property, whether real or personal, belonging exclusively to this State, or any political subdivision thereof, or the United States, except that in each county of this State, where the State of Texas has heretofore or may hereafter acquire and own land for the purpose of establishing thereon State farms and employing thereon convict labor on State account, it shall be the duty of the penitentiary board or board of penitentiary commissioners, or other officers of the penitentiary having the managing of same, to render said land for taxes to the tax assessor of said county; and the taxes on same shall be assessed and collected in the manner required by law for the assessment and collection of other taxes; provided, that said taxes shall be assessed and collected for county purposes only; and said county taxes shall be paid annually out of the revenue derived from such

State farms respectively, by the officer or officers having the management thereof, and same shall be charged to the expense account of operating such farm; and no debt shall be created against the general revenue of the State in case of the failure to pay said taxes out of the revenues of any such farm; and provided, further, that in arriving at the amount to be paid in taxes to the counties the value of the land only shall be considered and not the value of the buildings and other improvements owned by the State and situated on said land. [R. S. Art. 7507, Subdiv. 3.]

County fair grounds and buildings are subject to taxation. Ruling of Attorney General, p. 660, 1912-14.

The word "building" is construed to embrace the land used in connection with it. Ground used for the recreation of the students and to supply the school table with vegetables, which was necessary and used for the proper and economical conduct of the school, is exempt. *Cassiano v. Ursuline Academy*, 64 Tex. 673.

The exemption of buildings used for school purposes does not apply to land included in a farm cultivated in connection with a boarding school. *St. Edward's College v. Morris*, 82 Tex. 1; *Cassiano v. Academy*, 64 Tex. 676; *Red v. Morris*, 72 Tex. 554; *Morris v. Masons*, 68 Tex. 698.

A house used for school purposes and a residence is not exempt. *Edmonds v. City of San Antonio*, 36 S. W. 495.

The exemption of "public property used for public purposes" applies to property ownership of which is in the State or some one of its municipal sub-divisions. *St. Edward's College v. Morris*, 82 Tex. 1, 17 S. W. 512.

Lessee of city water works is liable for taxes on value of leasehold interest; not on value of the property. *State v. Taylor*, 72 Tex. 297, 12 S. W. 176.

Land held under lease from the State which reserves the right in the State to sell, not subject to taxation against the lessee. *Trammell v. Faught*, 74 Tex. 558, 12 S. W. 317.

Lessee of land from the State under absolute lease for term of years is liable for taxes upon the leasehold estate at such value as it would bring at a fair voluntary sale for cash, but not for value of the freehold estate. *Trammell v. Faught*, 74 Tex. 558, 12 S. W. 317.

Where school land is purchased and first payment made, it is subject to taxation, though the patent has not issued and the title is still in the State. *Hindes v. State*, 67 S. W. 467.

Until the Commissioner of the General Land Office selects one of the two surveys made by virtue of a Confederate land certificate, the title to the land remains in the State, and it is not subject to taxation. *Abney v. State*, 47 S. W. 1043.

In order for school property to be exempt from taxation it must be used in fact for school purposes. A plat of ground held for the purpose of erecting a school building at some future time would not be exempt. Opinion of Attorney General.

School lands held under contract for the purchase thereof from the State are subject to taxation as the property of the person by whom they are so held. Opinion of Attorney General.

State school lands do not become taxable until they have been awarded to the applicant by the Commissioner of the General Land Office. Opinion of Attorney General.

Lands held by institutions of learning as investment of endowment funds are not exempt from taxation. Opinion of Attorney General.

Lands devised to a town incorporated for free school purposes only and held as part of its school fund are, by Section 9 of Article 11 of the Constitution, exempt from taxation. Opinion of Attorney General.

All building and the lands upon which said buildings are located, used exclusively for school purposes, are exempt from taxation. Ruling of Attorney General, p. 618, 1912-14.

Property belonging to an endowment fund of a public library instituted and run under a bequest, open to all people free of charge, is exempt from taxation. Ruling of Attorney General, p. 628, 1912-14.

963. All Buildings Belonging to Counties.—All buildings belonging to counties for holding courts, for jails, or for county officers, with the land belonging to and on which such buildings are erected. [R. S. Art. 7507, Subdiv. 4.]

School lands belonging to the county are not subject to taxation. The leasehold cannot be taxed as the property of the lessee. *Dougerty v. Thompson*, 71 Tex. 192, 9 S. W. 99; *Davis v. Burnett*, 77 Tex. 3, 13 S. W. 613; *Land & Cattle Co. v. Board*, 80 Tex. 489, 16 S. W. 312.

When a building is used exclusively for school purposes, the fact that teachers and others connected with the school and their families live in such building does not prevent it from being exempt from taxation. On the other hand, if the head of the family is engaged in some other business than teaching school in the building which is claimed to be exempt from taxation, the fact that a school is carried on in the building in which he lives does not exempt it from taxation. Opinion of Attorney General.

A separate building situated on the same or adjacent property to that upon which the main school building stands and owned by those who own the school building and occupied by those only who are connected with the school, is exempt from taxation. Opinion of Attorney General.

964. Poor Farms and Poor Houses Belonging to Public.—All lands, houses and other buildings belonging to any county, precinct or town, used exclusively for the support or accommodation of the poor. [R. S. Art. 7507, Subdiv. 5.]

965. Property of Institutions of Purely Public Charity.—All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profits, unless such rents and profits and all moneys and credits are appropriated by such institution solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such insti-

tutions or not. An institution of purely public charity under this act is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds, property and assets of such institutions are placed and bound by its laws to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provides homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons. [R. S. Art. 7507, Subdiv. 6.]

A church parsonage is not exempt from taxation. Opinion of Attorney General.

Masonic, Knights of Pythias, Odd Fellows and other like orders are not "institutions of purely public charity" within the meaning of the Constitution, and their property is not exempt from taxation. That part of the Act of 1905 which attempts to exempt the property of such orders is unconstitutional. Opinion of Attorney General.

Young Men's Christian Association buildings are not exempt from taxation. They are not houses used exclusively for public worship nor institutions of learning within the meaning of the article. Ruling of Comptroller. See Sec. 949.

966. Fire Engines and Apparatus.—All fire engines and other implements owned by towns and cities used for the extinguishment of fires, with the buildings used exclusively for the safekeeping thereof. [R. S. Art. 7507, Subdiv. 7.]

967. Market Houses, Public Squares, Etc.—All market houses, public squares, or other public grounds, town or precinct houses or halls used exclusively for public purposes, and all works, machinery or fixtures belonging to any town used for conveying water to such town. [R. S. Art. 7507, Subdiv. 8.]

Farm products in the hands of the producer and family supplies for home and farm use are exempt from taxation. Constitution, Article 8, Section 19.

968. Public Libraries and Property of Same.—All public libraries and personal property belonging to the same. [R. S. Art. 7507, Subdiv. 9.]

969. Furniture Not Exceeding \$250.00 in Value.—All household and kitchen furniture not exceeding at their true and full value two hundred and fifty dollars to each family, in which may be included one sewing machine. [R. S. Art. 7507, Subdiv. 10.]

970. Annual Pensions Granted by State or United States.—All annual pensions granted by the State, or United States. [Act 1907, p. 302; Amended Act 1910, S. S., p. 122; R. S. Art. 7507, Subdiv. 11.]

Taxation is "equal and uniform" when the objects and rates of taxation are the same for all persons. *Norris v. City of Waco*, 57 Tex. 635. ,

A schoolhouse used and occupied for a boarding school, but in which the owner resides with his family, is not exempt from taxation. *Red v. Johnson*, 53 Tex. 284.

The word "building" is construed to embrace the land used in connection with it. It has been the policy of the State to encourage educational enterprises by exempting them from the burdens of government, and there is nothing to warrant the inference that the framers of the Constitution, in the use of the word "building," intended to discriminate against private schools. Ground used for the recreation of the students and to supply the school table with vegetables, which was necessary and used for the proper and economical conduct of the school, is exempt. *Cassiano v. Ursuline Academy*. 64 Tex. 673.

The exemption of buildings used for school purposes includes the lots upon which they are situated but does not apply to land included in a farm cultivated in connection with a boarding school. *St. Edward's College v. Morris*, 72 Tex. 554, 10 S. W. 681; *Morris v. Masons*, 68 Tex. 698, 5 S. W. 519.

A house used for school purposes and a residence is not within the statute. *Edmunds v. City of San Antonio*, 14 C. A. 155, 36 S. W. 495.

Buildings in which plaintiff conducted a school and in which he resided with his family are not used exclusively for school purposes, and exempt from taxation. *City of San Antonio v. Seeley* (Civ. App.), 57 S. W. 688.

School lands of a county are not subject to taxation. The leasehold cannot be taxed as the property of the lessee. *Dougherty v. Thompson*, 71 Tex. 192, 9 S. W. 99; *Davis v. Burnett*, 77 Tex. 3, 13 S. W. 613; *Land & Cattle Co. v. Board*, 80 Tex. 489, 16 S. W. 312. ,

In the absence of any statute controlling the subject, such property as a municipal corporation owns and uses for a public purpose is not affected by general laws regulating taxation. *Galveston Wharf Co. v. Galveston*, 63 Tex. 14.

The exemption of "public property used for public purposes" applies to property ownership of which is in the State or some one of its municipal sub-divisions. *St. Edward's College v. Morris*, 82 Tex. 1, 17 S. W. 512.

Until the commissioner of the land office selects one of the two surveys made by virtue of a Confederate land certificate the title to the land remains in the State and is not subject to taxation. *Abney v. State*, 20 C. A. 101, 47 S. W. 1043.

Legal tender notes and United States bonds belonging to corporations or individuals are exempt from taxation. *Rosenberg v. Weeks*, 67 Tex. 578, 4 S. W. 899. But see Art. 7531.

CHAPTER XXXII.

PROVISIONS OF PENAL CODE RELATING TO TAXATION AND TAX MONEYS.

(From Revised Penal Code of 1911.)

	SEC.		SEC.
Officer of the Government Fraudulently Taking or Misapplying Public Money	971	Certificates	992
What Included in the Term of "Misapplication" of Public Money	972	Corporations Liable for Occupation Tax Failing to Make Report	993
Receiving or Concealing Misapplied Public Money.....	973	Amounts Allowed Officers May Be Retained; State or County Not Responsible for Fees or Compensation, When; Officers to Make Sworn Statements of Fees Collected, Inform Party for Whom Collected and Pay Over Same	994
"Officer of the Government" Defined	974	Officers to Make Quarterly Statements of Moneys in Their Hands Uncalled for	995
State Treasurer Improperly Receiving Private Funds.....	975	Moneys Not Called for to Be Paid Over to County Treasurer	996
Diverting Special Funds.....	976	Penalty for Violating Three Preceding Articles	997
Misapplication of County or City Funds	977	Collector Extorting Excessive Taxes, etc.	998
Fraudulently Receiving Misapplied County or City Funds	978	Tax Officer Exacting Usury.....	999
Officers Failing to Pay Over Money	979	Tax Officer Assuming Taxes for Reward	1000
Venue of Certain Prosecutions....	980	Collector Failing to Forward Transcript	1001
Payment of Moneys and Accounting of Same.....	981	Collector Issuing Occupation Tax Receipt Without Affidavit	1002
Duty of Officers to Pay Over Money, When	982	Wrong Licenses no Protection.....	1003
Persons or Corporation Liable for Franchise Tax Failing to Make Report	983	Obstruction of Tax Collections....	1004
Charter or Right to Do Business of Corporations Forfeited, Right of Officers to Do Business in Corporate Name Ceases, When	984	Pursuing Taxable Occupation Without License	1005
Taxpayers to Make Oath—Punishment for False Affidavit....	985	Plumber Conducting Business Without License; Penalty for.....	1006
Failure of Collector to Collect Occupation Taxes	986	Penalty Not Exclusive.....	1007
Failure of Dealer to Post Occupation License	987	Payment of Tax Bars Prosecution	1008
Penalty for Violating Preceding Article	988	Refusal to Render or Swear to Assessment	1009
Officer Purchasing Property Sold for Taxes	989	Failure of President, etc., of Bank, to Furnish Statement to Tax Assessor	1010
Tax Collector Failing to Perform Certain Duties	990	Definition of "Money and Notes".....	1011
Tax Collector Issuing Unauthorized Tax Receipt.....	991	Pretended Sale or Transfer of Coin, Notes or Bonds.....	1012
Clerk Failing to Make Certain		Penalty for Violation of Article 137	1013

971. Officer of the Government Fraudulently Taking or Misapplying Public Money.—If any officer of the government, who is by law a receiver or depository of public money, or any clerk or other person employed about the office of such officer, shall fraudulently take, or misapply, or convert it to his own use, any part of such public money, or secrete the same with intent to take, misapply or convert it to his own use, or shall pay or deliver the same to any person, knowing that he is not entitled to receive it, he shall be punished by confinement in the penitentiary for a term not less than two nor more than ten years. [Act Feb. 12, 1858, p. 158; Penal Code, Art. 96.]

The offenses by tax collector having State money in their custody denounced in Penal Code 1911, Art. 96, 97, by Art. 144, and by Art. 107 are separate and distinct, and neither is in conflict with or repeals the others. *Quillin v. State*, 187 S. W. 199.

Under Penal Code 1911, Art. 74, defining "principles" as all persons who are guilty of acting together in the commission of an offense, and Arts. 96, 97, defining misapplication of public money by public officers, one not a public officer may be prosecuted as a principal for misappropriation of public money, although he could not commit it alone. *Quillin v. State*, 187 S. W. 199.

And the indictment need not allege the facts relied on to show accused to be a principal, although the offense may not have been actually or personally committed by him. *Quillin v. State*, 187 S. W. 199.

A person could not be convicted for embezzlement by his deputies or the depository banks. *Ferrill v. State*, 152 S. W. 901.

Indictments may charge conjunctively in one count the several ways the offense may be committed. *Dill v. State*, 35 T. Cr. R., 240, 33 S. W. 126; *Howell v. State*, 29 Id., 592, 16 S. W. 533; *Willis v. State*, 34 Id., 148, 29 S. W. 787; *Laroe v. State*, 30 Id., 374, 17 S. W. 934; *Comer v. State*, 26 Id., 509, 10 S. W. 106.

It is sufficient if the indictment generally describes money by name, kind, quantity, number and ownership. *Lewis v. State*, 28 T. Cr. R. 140, 12 S. W. 736.

972. What Included in the Term "Misapplication of Public Money."—Within the term, "misapplication of public money," are included the following acts:

1. **Using Public Funds.**—The use of any public money, in the hands of any officer of the government, for any purpose whatsoever, save that of transmitting or transporting the same to the seat of government, and its payment into the treasury.

2. **Exchanging Public Funds.**—The exchange, by any officer, of one character of public funds in his hands, for those of another character; the purchase of bank checks, or postoffice orders, in exchange, for transmission to the treasury, is not included in this class.

3. **Depositing Public Funds Elsewhere Than in Treasury.**—The

deposit, by any officer of the government, of public money in his hands, at any other place than the treasury of the State, when the treasury is accessible and open for business, or permitting the same to remain on deposit at such forbidden place, after the treasury is open.

4. **Officer Purchasing Warrants.**—The purchase of State warrants, or other evidence of State indebtedness, by any officer of the government, with public money in his hands.

5. **Retaining Funds After Notice from Comptroller.**—The retention in his hands, by any collector of taxes, of any funds belonging to the State, for thirty days after receiving notice from the Comptroller of Public Accounts to pay the same over to the Treasurer.

6. **Failing to Pay Into Treasury at Proper Time.**—The wilful failure of any officer to pay into the State Treasury, at the time prescribed by law, whatever funds he may have on hand.

7. **Other Cases.**—The special enumeration of cases of misapplication above set forth shall not be understood to exclude any case which, by fair construction of language, comes within the meaning of the preceding language; provided, that this article shall not be construed to prevent collectors of taxes from paying warrants drawn by the Comptroller in favor of officers living in their district or county, as may be provided by law.

Venue.—The offenses defined in Subdivisions 5 and 6 of this article, when committed in any county in this State, may be prosecuted in the district court of Travis County, or in the county where the money was received. [Acts 1879, Chap. 150, p. 165; Penal Code, Art. 97.]

973. Receiving or Concealing Misapplied Public Money.—If any person shall knowingly and with fraudulent intention receive or conceal any public money which has been taken, converted or misapplied by any officer or employe as set forth in the two preceding articles, he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years. [Act Feb. 5, 1875, p. 12; Penal Code, Art. 101.]

974. "Officer of the Government" Defined.—Under the term, "officer of the government," as used in this chapter, are included the State Treasurer and all other heads of departments who by law may receive or keep in their care public money of the State; tax collectors, and all other officers who by law are authorized to collect, receive or keep money due to the government. [Penal Code, Art. 102.]

"Officer." Within the purview of the statute defining embezzlement of public money, a deputy sheriff is an officer. *State v. Brooks*, 42 Tex. 62.

And so, likewise, is a justice of the peace. *Crump v. State*, 23 T. Cr. R., 615, 5 S. W. 182.

975. State Treasurer Improperly Receiving Private Funds.—If the Treasurer of this State shall knowingly keep or receive into the building, safes or vaults of the Treasury, any money, or the representative of money, belonging to any individual, except in cases expressly provided for by law, he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years. [Act May 3, 1873, pp. 61-2; Penal Code, Art. 103.]

976. Diverting Special Funds.—If any person shall knowingly and wilfully borrow, withhold or in any manner divert from its purpose, any special fund, or any part thereof, belonging to or under the control of the State, which has been set apart by law for a specific use, he shall be punished by confinement in the penitentiary for a term not less than two nor more than ten years. [Const., Art. 8, Par. 7; Penal Code, Art. 104.]

977. Misapplication of County or City Funds.—If any officer of any county, city or town in this State, or any clerk or other person employed by such officer, shall fraudulently take, misapply or convert to his own use any money, property or other thing of value belonging to such county, city or town, that may have come into his custody or possession by virtue of his office or employment, or shall secrete the same with intent to take, misapply or convert it to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be punished by confinement in the penitentiary for a term not less than two nor more than ten years. [Penal Code, Art. 105.]

County treasurer's relation to the county is not, under this article, that of a debtor, nor is it, under the Revised Statutes, that of a bailee. He is the bonded custodian of the county funds, and failure from any cause to produce is a breach of his bond. *Poole v. State*, 97 Tex. 77, 76 S. W. 425.

He cannot be removed from his office under this article until he has been convicted on a trial before a jury. *Bland v. State*, 38 S. W. 252.

A subordinate police officer or jailor, not being an officer contemplated by this article, cannot be prosecuted for embezzlement under it. *Hartnett v. State*, 56 T. Cr. R., 281, 119 S. W. 855.

Indictment for misapplication of public funds need not describe the money embezzled, though the better practice is to describe it generally by name, kind and ownership. *State v. Brooks*, 42 Tex. 62; *Lewis v. State*, 28 T. Cr. R., 140, 12 S. W. 736.

Indictment charged defendant as an officer and as clerk and employe of an officer, defendant being the assistant financial agent of penitentiaries. Held, that the allegations are not repugnant. *Busby v. State*, 51 T. Cr. R., 289, 103 S. W. 638.

Same; ownership of the money must be alleged in the county, city or

town, and if a city, that it was incorporated; that defendant received the money by virtue of his office, and converted it to his own use. *Crane v. State*, 26 T. Cr. R. 482.

"Current money of U. S." includes any kind of paper currency money of the U. S. which passes current as money under the guaranty of the U. S. government; and includes not only legal tender notes, but national bank bills and gold and silver certificates. *Barry v. State*, 80 S. W. 630. See further *Thompson v. State*, 35 T. Cr. 511, 34 S. W. 629; *Colter v. State*, 37 T. Cr. 284, 39 S. W. 576; *Jones v. State*, 39 T. Cr. 387, 46 S. W. 250.

Justice of peace is an officer within purview of article. *Crump v. State*, 23 T. Cr. 615, 5 S. W. 182.

County treasurer—relation to county or to school fund, is neither that of bailee nor debtor within ordinary meaning of term. If he were a debtor, the money would be the property of officer and he could not be guilty of misapplying it as defined in Art. 103. His liability arises out of his official bond, and principles which are founded on public policy. *Poole v. Burnet County*, 94 Tex. 77.

County judge—misapplication of school funds—indictment will not lie because such funds cannot come into his hands by virtue of his office, and the law does not authorize county judge as such to receive county school money. *Waswick v. State*, 36 T. Cr. 63, 35 S. W. 386.

Testimony with reference to goods which were not charged was properly refused. *Busby v. State*, 51 T. Cr. 289, 103 S. W. 638.

Items barred by limitation properly excluded. *Busby v. State*, 51 T. Cr. 289.

Checks turned over to the bank and collected by it are admissible. *Busby v. State*, 51 T. Cr. 289, 103 S. W. 638.

Indorsement of checks by defendant which were made payable to financial agent of penitentiary are competent to show that they were the funds of the State. *Busby v. State*, 51 T. Cr. 289, 103 S. W. 638.

Books as evidence against defendant must be shown to be under his supervision and control, unless other evidence is offered that books were properly kept and were books of original entries. *Busby v. State*, 51 T. Cr. 289, 103 S. W. 638.

Expert bookkeeper's report admissible where the bookkeepers were appointed to examine the books and make a report between the defendant and the State. *Busby v. State*, 51 T. Cr. 289, 103 S. W. 638.

Civil judgment against defendant and his bondsmen is not admissible as judgments in civil cases are not evidence in criminal. *Busby v. State*, 51 T. Cr. 289, 103 S. W. 638.

Paymet no defense. *Busby v. State*, 51 T. Cr. 289, 103 S. W. 638.

Orders of commissioners' court in explanation of certain property turned over to said court by defendant, in order that the same might be considered in mitigation of punishment where the embezzlement occurred prior to such order or settlement, was properly excluded. *Butler v. State*, 46 T. Cr. 287, 81 S. W. 743.

Charge of court embodying the rule: that where a public officer is shown to have received money on account of his trust, it is incumbent upon him to pay it over to the State in accordance with the obligation assumed by him; and where exculpatory evidence of an important character is peculiarly within the knowledge of defendant it is his duty to produce it—is correct. *Busby v. State*, 51 T. Cr. 289, 103 S. W. 638.

978. Fraudulently Receiving Misapplied County or City Funds.

—If any person shall, knowingly and with fraudulent intention, receive or conceal any money or property which has been taken, misapplied or converted by any officer or employe, as set forth in the preceding article, he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years. [Penal Code, Art. 106.]

979. Officers Failing to Pay Over Money.—Every tax collector or other officer or appointee, authorized to receive public moneys, who shall wilfully and negligently fail to account for all moneys in their hands belonging to the State, and pay the same over to the State Treasurer whenever and as often as they may be directed so to do by the Comptroller of Public Accounts (Art. 108a, post) and all tax collectors and other officers or appointees authorized to receive public moneys, who shall fail to account for all moneys in their hands belonging to their respective counties, cities, or towns, and pay same over to the respective county treasurers, or city treasurers, whenever or as often as they may be directed so to do by the respective county judges, or county commissioners' courts, or mayor or board of aldermen (Art. 108b, post), shall be deemed guilty of a felony, and shall be punished by imprisonment in the penitentiary for not less than three nor more than ten years; provided, that tax collectors shall have thirty days from the date of such direction within which to comply with the same. [Act. 1879, Extra Session, Chap. 8, Sec. 4; Penal Code, Art. 107.]

980. Venue of Certain Prosecutions.—Prosecutions for failing to account for, and pay over money belonging to the State, under the provisions of the preceding article, shall be conducted in Travis County; and prosecutions for failing to account for, and pay over, moneys belonging to the counties, cities and towns, shall be conducted in the county to which such money may belong, or in the county where such city or town is situated. [Penal Code, Art. 108.]

981. Payment of Moneys and Accounting for Same.—All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to the State, and pay the same over to the State Treasurer whenever and as often as they may be directed so to do by the Comptroller of Public Accounts; provided, that tax collectors shall have thirty days from the date of such direction within which to comply with the same. [Act 1879, S. S., p. 5; Penal Code, Art. 108a.]

This article and Art. 108b constitute Arts. 7658, 7659 of Vernon Sayles' Civ. St. 1914, and were a part of the act from which Art. 107, Penal Code,

was taken. They are here inserted for convenience and in order to supplement Art. 107.

The collector's reports and remittances of taxes collected on account of the State and the county are independent of each other. *T. L. & C. C. v. Hemphill County* (Civ. App.), 61 S. W. 334.

After the collection, the collector is required under penalties to promptly report and remit all taxes collected by him to the State and county treasurers without excepting cases in which suits, however promptly filed, may be instituted for the recovery thereof. *Id.*

Certain facts held not to excuse a county tax collector disobeying an order of the commissioners' court to make a payment. *Bailey v. Aransas County*, 46 Civ. App., 547, 102 S. W. 1159.

982. Duty of Officers to Pay Over Money, When.—All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to their respective counties, cities or towns, and pay the same over to the respective county treasurers or city treasurers, whenever and as often as they may be directed so to do by the respective county judges, or county commissioners' courts, or mayor or board of aldermen; provided, that tax collectors shall have ten days from the date of such direction within which to comply with the same. [Acts 1879, S. S., p. 6, Sec. 2; Penal Code, Art. 108b.]

983. Persons or Corporations Liable for Franchise Tax Failing to Make Report.—Every person required by the law prescribing franchise taxes to be paid by corporations to make any annual report to the Secretary of State, who shall, for a longer period than five days, and every person who shall, for more than ten days after the mailing by the Secretary of State demand upon him for any other report, which the Secretary of State is by this law authorized to require, fail or refuse to make such report, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifty dollars and not more than two hundred dollars; and each day of such failure or refusal after the expiration of said five days or said ten days, as the case may be, shall constitute a separate offense. The Secretary of State shall keep a record of the mailing of any and all notices and demands for reports provided for by this law. [Penal Code, Art. 148.]

984. Charter or Right to Do Business of Corporations Forfeited, Right of Officers to Do Business in Corporate Name Ceases, When.—In any and all cases in which the charter or right to do business of any private domestic corporation, heretofore or hereafter chartered under the laws of this State, or the permit of any foreign corporation or its right to do business within this State, shall have been, or shall hereafter be, forfeited, it shall be unlawful for any

person or persons who were or shall be stockholders, or officers of such corporation at the time of such forfeiture to do business within this State in or under the corporate name of such corporation, or to use signs or advertisements of such corporation or similar to the signs or advertisements which were used by such corporation before such forfeiture; and each and every person who may violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than one hundred dollars and not more than one thousand dollars; provided, the inhibition and penalties prescribed by this article shall not apply where the right of such corporation to do business within this State has been revived in the manner provided by law and is at the time in good standing. [Penal Code, Art. 149.]

985. Taxpayers to Make Oath—Punishment for False Affidavit.—All assessors of taxes in this State shall require all taxpayers, when assessed by them, to make oath as to any such sale, exchange or transfer made by them, on the first day of January, or within sixty days before said first day of January of any year for which any such assessment is made, as to the good faith and bona fide business transaction of any such sale, exchange or transfer, as above set forth, if any such should have been made by them; and if it should be disclosed that any such pretended sale, exchange or transfer has been made for the purpose of evading taxation, then, and in that event, the assessor shall list and render against such person the coin, bank notes or other notes or bonds subject to taxation under the laws of this State; provided, that if any person shall make a false affidavit as to any of the foregoing facts, he shall be deemed guilty of perjury and be punished as is now provided by law. [Act March 23, 1891, p. 40; Penal Code, Art. 139.]

986. Failure of Collector to Collect Occupation Taxes.—It shall be the duty of the tax collector to make an affidavit before any justice of the peace against any person, firm or association of persons engaging in or pursuing any occupation on which, under the laws of this State, a tax is imposed, who fails or refuses to pay the same. And any collector of taxes who shall knowingly permit any person, firm or association of persons to engage in or pursue any occupation on which, by the laws of this State, a tax is imposed, without first paying all legal taxes assessed against such person, firm or association of persons, for such occupation, for State and county purposes, shall be fined in any sum not less than fifty nor more than five hundred dollars for every such offense; provided, that evidence that such collector of taxes has made the affidavit

herein required immediately against such person, firm or association of persons, so pursuing an occupation in violation of law, shall be a defense against all prosecutions under this article. [Act April 2, 1887, p. 128; Penal Code, Art. 140.]

987. Failure of dealer to Post Occupation License.—1. Any person, firm or corporation, required by the statutes of this State to pay an occupation tax as a retail liquor dealer, shall post and keep posted in a conspicuous place in his or their place or places of business, his or their occupation license for the tax due the State, county and city, on the occupation in which they are engaged. Said occupation license shall be posted as above specified before any person, firm or corporation, subject to the occupation tax, shall engage in business.

2. Any person, firm or corporation failing, neglecting or refusing to post or keep posted their occupation license, as required in Section 1 of this article, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in double the amount of their occupation tax for each offense, and each day any person, firm or corporation shall violate the provisions of this article shall constitute a separate offense.

3. If from any cause any certificate of occupation license shall be lost or destroyed, it shall be the duty of the clerk, upon application of the person, firm or corporation who formerly had such license, to furnish a new certificate for the remainder of the term covered by the license lost or destroyed. [Act April 4, 1887, p. 132; Penal Code, Art. 141.]

Gravamen of the offense is pursuing the occupation without having paid the occupation tax and posting the license. *Schwartz v. State*, 32 T. Cr. R., 387, 24 S. W. 28; *Maroney v. State*, 49 Id., 337, 92 S. W. 844.

Each day's failure is a separate offense. *Schwartz v. State*, supra. The law is constitutional. *Bell v. State*, 28 T. Cr. R., 96, 12 S. W. 410.

988. Penalty for Violating Preceding Article.—Any person violating the provisions of this article may be arrested without warrant by any peace officer and carried before the nearest justice of the peace for trial; and any peace officer who shall fail or refuse to arrest such person on his own knowledge, or upon information from some credible person, shall be punished by fine not exceeding five hundred dollars. [Penal Code, Art. 142.]

989. Officer Purchasing Property Sold for Taxes.—If any sheriff, or collector of taxes, of any county in this State, deputy sheriff or deputy collector, or any employe of such sheriff or collector authorized by him to collect or receive taxes, or to assist in any way

in making sales for the collection of taxes, shall, in the county where he resides, bid for, purchase or attempt to purchase, or be in any way interested in the purchase of any property, either real or personal, at any sale of such property, made or attempted to be, for the collection of State and county taxes, or either, he shall be fined not less than ten nor more than one thousand dollars, and any such officer so offending shall be deemed guilty of official misconduct, and, upon conviction, shall be removed from office. [Act February 9, 1883, p. 7; Penal Code, Art. 143.]

990. Tax Collector Failing to Perform Certain Duties.—If at the end of any month the collector of taxes shall fail to make to the Comptroller of Public Accounts his itemized monthly report of taxes collected, or if he shall fail at the end of any month to make to the commissioners' court his itemized monthly report of all tax collections for the county, or if he shall fail at the end of any month, or within three days thereof, to promptly remit to the State Treasurer the amount due by him to the State, or pay over to the county treasurer the amount due by him to the county, or if he shall fail to make out and post, between April 1 and 15 of each year, a list of delinquent or insolvent taxpayers, he shall be deemed guilty of a misdemeanor, and, upon conviction, fined in a sum not less than three hundred nor more than one thousand dollars, and each failure shall constitute a separate offense. [Act of 1893, p. 91; Penal Code, Art. 144.]

991. Tax Collector Issuing Unauthorized Tax Receipt.—Any collector of taxes in this State, who shall issue an occupation tax receipt upon any blank paper, or blank of any kind whatever other than the blank occupation tax receipt furnished to him as required by law, shall be deemed guilty of a misdemeanor, and each receipt so unlawfully issued shall constitute a separate offense, and, upon conviction in any court of competent jurisdiction, shall be punished by fine of not less than one hundred dollars nor more than five hundred dollars. [Penal Code, Art. 145.]

992. Clerk Failing to Make Certain Certificates.—If the county clerk shall fail to examine the monthly reports of the collector of taxes, and within two days after the presentation to him of said reports by the collector, to certify to their correctness as regards names, dates and amounts, or shall fail to file the report intended for the commissioners' court, together with the tax receipt stubs in his office for the next regular meeting of the commissioners' court, he shall be deemed guilty of a misdemeanor, and, upon conviction, fined in a sum not less than fifty nor more than two hundred dol-

lars, and each failure shall constitute a separate offense. [Penal Code, Art. 146.]

993. Corporations Liable for Occupation Tax Failing to Make Report.—If the Comptroller has reason to believe, or does believe, that any individual, company, corporation, association, receiver or receivers, subject to the provisions of the law providing for the levy of occupation taxes, has made a false return, or has failed or omitted to make a full return of gross receipts, or other statement of business done, required by any of the provisions of said law, he shall report the same in writing to the Governor, and it shall be the duty of the Governor to immediately require the Revenue Agent of the State of Texas to examine any books, papers, documents, or other records or evidence showing or tending to show such unlawful act or omission. Said revenue agent shall check the report made with such books, papers, documents or other records or evidence, and make his report to the Comptroller; and, if it appears from said report that any false or incorrect return has been made, or that any individual, or the president, treasurer or superintendent of any company, corporation or association, or any member of any firm required by this act to make reports, has failed or omitted to make a full return, as required by law, then the Comptroller shall notify such individual, or the president, treasurer or superintendent of any company, corporation or association, or receiver or receivers of any company, corporation or association, or any member of any firm, to make forthwith an additional or supplemental report; and if any such individual or the president, treasurer or superintendent of any company, corporation or association, or any member of a firm, or any receiver or receivers of any company, corporation or association making said original report, shall fail or refuse to make said additional or supplemental report, he shall be guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than two hundred nor more than five hundred dollars; and venue of such prosecution is hereby fixed in Travis County, Texas. [Act 1907, p. 500; Penal Code, Art. 147.]

994. Amounts Allowed Officers May Be Retained; State or County Not Responsible for Fees or Compensation, When; Officers to Make Sworn Statements of Fees Collected, Inform Party for Whom Collected, and Pay Over Same.—The amounts allowed to each officer mentioned in Articles 110, 111 and 112 may be retained out of the fees collected by him under existing laws; but in no case shall the State or the county be responsible for the payment of any sum when the fees collected by any officer are less than the maximum compensation allowed by this law, or be responsible for the

pay of any deputy or assistant. Each officer mentioned in Article 110, and also the sheriff, shall, at the close of each fiscal year, make to the district court of the county in which he resides a sworn statement, showing the amount of fees collected by him during the fiscal year and the amount of fees charged and not collected, and by whom due, and the number of deputies and assistants employed by him during the year, and the amount paid or to be paid each; and all fees collected by officers named in Article 110 during the fiscal year in excess of the maximum amount allowed and of the one-fourth of the excess of the maximum amount allowed for their services, and for the services of their deputies or assistants herein-after provided for, shall be paid to the county treasurer of the county where the excess accrued; provided, that any officer in Article 110 who does not collect the maximum amount of his fees for any fiscal year and who reports delinquent fees for that year, shall be entitled to retain, when collected, such part of such delinquent fees as is sufficient to complete the maximum compensation for the year in which delinquent fees were charged, and also to retain the one-fourth of the excess belonging to him, and the remainder of the delinquent fees for that fiscal year shall be paid as hereinbefore provided for when collected; provided, that in all counties in this State having more than one judicial district, the district clerks thereof shall in no case be allowed fees in excess of the maximum fees allowed clerks in counties having only one district court. [Act 1907, p. 50.]

It shall be the duty of every county and precinct officer in the State of Texas who shall, in his official capacity, collect or receive any money or fees belonging to any witness, officer or other person, to inform such person of the collection of such money or fees, and to promptly pay the same over on demand to the person entitled thereto, taking receipt therefor, which shall be entered or noted in the fee book of such officer. [Penal Code, Art. 115.]

995. Officers to Make Quarterly Statements of Moneys in Their Hands Uncalled for.—On or before the second Mondays in February, May, August and November of each year, said officers shall make report in writing and under oath to the commissioners' court of their respective counties of all such moneys and fees so collected by them during the quarter last preceding and remaining in their hands uncalled for, giving the number and the style of each cause in which said moneys or fees accrued and the name of the person entitled thereto, which report shall be filed with the county clerk of said county, and the same shall be by him kept and pre-

served for future reference and examination. [Penal Code, Art. 116.]

996. Moneys Not Called for to Be Paid Over to County Treasurer.—Every officer collecting or having the custody of any money or fees embraced within the provisions of this law at the expiration of four years from the time of collecting or receiving such money or fees, in all cases where the same have not been paid over to the person or persons entitled thereto, shall pay the same to the county treasurer of his respective county, accompanying the same by an itemized statement, as provided in Article 115 hereof, which statement shall be filed and kept by said treasurer, and said money or fees shall be by him placed to the credit of the road and bridge fund of the county; and the treasurer shall issue to the said officer his receipt for said money or fees, itemizing the same as above provided, which receipt shall be filed by said officer with the county clerk of his respective county; provided, that any officer, upon retiring from office, having any money or fees in his hands embraced within the provisions of this law, and which are not due to be turned over to the county treasurer as herein provided, shall turn the same over to his successor in office, together with an itemized list of the same as hereinbefore provided, taking proper receipt therefor, and his successor shall report and pay over the same to the county treasurer in accordance with the provisions hereof. [Penal Code, Art. 117.]

997. Penalty for Violating Three Preceding Articles.—Any person violating any of the provisions of the three preceding articles shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars. [Penal Code, Art. 118.]

998. Collector Extorting Excessive Taxes, Etc.—If any person authorized to collect or receive taxes or other money due the State shall extort or attempt to extort from any one a larger sum than is due, or shall receive any sum of money or other reward as consideration for granting any delay in the collection of such dues, or for doing any illegal act or omitting to do any legal act in relation to the collection of such money, he shall be punished by fine not exceeding five hundred dollars. [Penal Code, Art. 123.]

999. Tax Officer Extorting Usury.—If any assessor or collector of taxes shall advance for a person owing taxes to the government the amount of money so due, and shall charge therefor a rate of interest greater than ten per centum per annum, he shall be punished in the manner provided in the preceding article. [Penal Code, Art. 124.]

1000. Tax Officer Assuming Taxes for Reward.—Within the

meaning of the preceding article is included the case of any assessor or collector who fails to collect taxes due and assumes to be responsible to the government therefor, and receives for such act any compensation or reward. [Penal Code, Art. 125.]

1001. Collector Failing to Forward Transcript.—The collector of taxes shall keep a book of such size and character as may be necessary, in which shall be entered quarterly, at the following dates, to wit, January 1, April 1, July 1, and October 1, 1879, or within ten days thereafter commencing on July 1, 1879, in which to require the returns to be made under the provisions of this article, the several amounts as shown by such returns for which and upon which any person, firm or association of persons is or may be liable to a tax upon occupation under this act, and within fifteen days from the time of receiving and making up the several amounts and the sums due upon such amounts as occupation tax, the collector shall forward to the Comptroller of Public Accounts a transcript or duplicate of the return and the amounts shown by his record, this transcript and the record from which it is taken to show the amount of such quarterly returns and the tax due thereon from every person, firm or association of persons liable to such tax, and any collector failing to forward such transcript or duplicate, taken from the pages of such collector's record herein provided for, or who shall forward a false or pretended transcript of such account, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than five hundred dollars; provided, that nothing contained in this article is intended to affect the liability which, in the absence of this statute, would be incurred under any penal enactment of this State. [Acts 1879, Chap. 134; Penal Code, Art. 125.]

1002. Collector Issuing Occupation Tax Receipt Without Affidavit, Etc.—If any tax collector shall issue any occupation tax receipt without first taking or filing the affidavit provided for in the act of March 13, 1895, page 18, Acts of 1895, Art. 5049 of the Revised Civil Statutes, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than ten nor more than one hundred dollars. [Acts of 1895, p. 18; Penal Code, Art. 127.]

1003. Wrong License No Protection.—No occupation tax receipt or license taken out by a merchant of a lower class than the one of which he properly belongs, shall be any protection against a prosecution and conviction for knowingly pursuing that of a higher class and failing to pay the occupation tax due therefor. [Penal Code, Art. 128.]

1004. Obstruction of Tax Collections.—If any person shall, by

force or threats of force, prevent, or attempt to prevent, the collection of taxes or other money due the State by an officer authorized to enforce such collection, he shall be punished by a fine not less than one hundred nor more than five hundred dollars, and by imprisonment in the county jail not less than three months nor more than one year. When the means used to prevent the collection are such as to amount to a riot, or unlawful assembly, the punishment shall be that which is prescribed in this code. [Penal Code. Art. 129.]

1005. Pursuing Taxable Occupation Without License.—Any person who shall pursue or follow any occupation, calling or profession, or do any act taxed by law, without first obtaining a license therefor, shall be fined in any sum not less than the amount of the taxes due, and not more than double that sum. [Penal Code, Art. 130.]

1006. Plumber Conducting Business Without License; Penalty for.—Any person, whether as master plumber, employing, or journeyman plumber, engaged in, working at, or conducting the business of plumbing without license, as provided by law, shall be guilty of a misdemeanor, and, on conviction thereof, shall pay a fine of not less than twenty nor more than two hundred and fifty dollars. [Acts 1897, p. 236; Penal Code, Art. 131.]

1007. Penalty Not Exclusive.—The preceding article shall not be construed so as to affect any civil remedy to enforce the collection of taxes. [Penal Code, Art. 132.]

1008. Payment of Tax Bars Prosecution.—Any person prosecuted under Article 130 of the Penal Code of the State of Texas shall have the right at any time before conviction to have such prosecution dismissed upon payment of the tax and all costs of said prosecution, and procuring the license to pursue or follow the occupation for the pursuing which, without license, the prosecution was instituted; and no prosecution shall be commenced against any person after the procuring of said license, notwithstanding they may have followed such occupation, calling or profession before procuring said license; provided, said license shall cover the time said person has actually followed said occupation, calling or profession. The county clerk shall be entitled to ten cents for issuing the license, to be paid by the person to whom it is issued. [Act March 15, 1881, pp. 34-5; Penal Code, Art. 133.]

It was improper for the officer to issue the license until both tax and costs were paid, but the court erred in charging the jury to convict if the defendant paid the tax before trial but did not pay the costs then accrued. *Rogers v. State*, 35 T. Cr. R., 543, 34 S. W. 634.

Previous laws of same tenor have been held constitutional. *Harris v. State*, 4 T. Cr. R., 131, Following *Higgins v. Rinker*, 47 Tex. 393; *Tonella v. State*, 4 T. Cr. R. 325; *Fahey v. State*, 27 Id., 146, 11 S. W. 108; *Floeck v. State*, 34 Id., 314, 30 S. W. 794.

Indictment must allege positively the following of the occupation and the tax due. *Archer v. State*, 9 T. Cr. R. 78; *Rather v. State*, 15 Id., 556; *Sheffield v. State*, 14 Id., 238.

It is not necessary to allege the name of the person to whom the liquor was sold. *Mansfield v. State*, 17 T. Cr. R. 468.

Bona fide social clubs are not liable to the occupation tax in selling to its members and non-resident visitors, if the sales are not for profit.

The law does not require druggists in local option districts to obtain license to sell such intoxicants. *Gibson v. State*, 34 T. Cr. R. 218, 29 S. W. 1055; *Rathburn v. State*, 88 Tex. 281, 31 S. W. 189.

Posting license is required in order to enforce prompt payment of the occupation tax. *Schwartz v. State*, 32 T. Cr. R. 387, 24 S. W. 28.

Employe, following the occupation, is equally liable with the principal. *La Norris v. State*, 13 T. Cr. R. 33; *Davidson v. State*, 27 T. Cr. R. 262, 11 S. W. 371.

Proof of a single sale will not sustain allegation of pursuing the occupation. *Stanford v. State*, 16 T. Cr. R. 331; *Merritt v. State*, 16 Id., 435; *Halfin v. State*, 18 Id., 410.

Payment of the United States special revenue tax is prima facie evidence of the following of the occupation, which payment may be shown by a copy of the entries in the books of the Internal Revenue office. *Floeck v. State*, 34 T. Cr. R. 314, 30 S. W. 794; *Gersteman v. State*, 35 Id., 318, 33 S. W. 357; *Monford v. State*, Id., 237, 30 S. W. 351.

1009. Refusal to Render or Swear to Assessment.—If any person shall refuse or neglect to make out and render a list of his taxable property when called upon in person by the assessor of taxes or his deputy, or shall fail or refuse to qualify to the truth of his statement of taxable property, or shall fail or refuse to subscribe to any oath or affirmation required by law in the rendition of taxable property, he shall be fined in any sum not less than twenty nor more than one thousand dollars. [Act Aug. 19, 1876, pp. 196-7; Penal Code, Art. 134.]

1010. Failure of President, Etc., of Bank to Furnish Statement to Tax Assessor.—If any president, vice-president, or cashier of any National bank shall fail or refuse to furnish the tax assessor or deputy tax assessor, when called upon to do so by such tax assessor or deputy tax assessor, a sworn statement showing:—

1. A list of names of all the shareholders of the stock of such National bank.
2. The number and amount of the shares owned and held by each shareholder of stock in such National bank.
3. The place of residence of each stockholder in such bank, if known. (If not known, the fact shall be so stated.)

4. The amount or amounts of notes issued by such National bank and circulating as money, or that is intended to circulate as money (stating such amounts in dollars.)

5. The amount of money on hand or in transit, or in the hands of other banks, bankers, brokers or others, subject to draft, whether the same be in or out of the State.

6. The amount of indebtedness of such bank and how much indebtedness is evidenced.

7. The amount of paper evidencing indebtedness owned by such bank, which was acquired by such bank either at par or at a discount.

Any such president, vice-president, or cashier of a "National bank" so failing or refusing to furnish such statement, as above required, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars, and by confinement in jail not less than ten days, nor more than thirty days. [Penal Code, Art. 135.]

1011. Definition of "Money and Notes."—By the term, money and notes, mentioned in the preceding article, is meant all money owned and on hand by such bank, whether on deposit or otherwise. [Penal Code, Art. 136.]

1012. Pretended Sale or Transfer of Coin, Notes or Bonds.—Any evasion by means of artifice or temporary or fictitious sale, exchange or transfer upon any bank books of gold and silver coin, bank notes or other notes or bonds subject to taxation under the laws of this State, for United States non-taxable treasury notes, or any notes or bonds not subject to taxation, and any such pretended sale, exchange or transfer not made in good faith, and by actual delivery of the funds so sold, exchanged or transferred and made only by entry on bank books, or by any express or implied understanding not to immediately make a bona fide and permanent sale, shall be deemed prima facie to be a fraud upon the public revenue of this State. [Penal Code, Art. 137.]

1013. Penalty for Violation of Art. 137.—The president, cashier of any banking or other corporation, or any person that may be a party or privy to such fraudulent sale, exchange or transfer shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, and in addition thereto, shall be confined in the county jail not less than ten days nor more than thirty days. [Act March 23, 1891, p. 39; Penal Code, Art. 138.]

CHAPTER XXXIII.

APPENDIX.

PAGE.	PAGE.
1. Act of 1917, Creating State Highway Department and Levying Taxes on Automobiles and Other Motor Vehicles .....590-603	the Levy of Additional Ad Valorem School Taxes by Cities and Towns .....603-606
2. Act of 1917, Providing for	3. Act of 1917, Authorizing Cities to Collect Taxes for Park Purposes.....606-607

STATE HIGHWAY DEPARTMENT.

[H. B. No. 2.] Chapter 190.

An Act to establish a State Highway Department, creating a State Highway Commission, and the office of State Highway Engineer; prescribing the duties of the members of the Commission and of the Engineer, and fixing the compensation of each and the qualifications of such engineer; providing for the employment of such clerical and other assistance as may be necessary in the operation of the Department; prescribing reciprocal duties for the Commission and for the county commissioners' courts of the State; directing the Commission to plan and adopt a comprehensive system of State Highways, and to promote the construction thereof by co-operation with the counties, or independently by the Commission; authorizing a policy of State aid to counties in road construction intended to promote a greater uniformity in the construction of highways; directing co-operation of the Department with the Federal Government in the utilization of any funds appropriated by Congress in aid of road construction in this State; authorizing the working of State prisoners on State Highways under conditions that may be agreed upon by the Highway Commission and the prison commissioner approved by the Governor; authorizing the use by the Department of the Laboratories of the University of Texas and of the Agricultural and Mechanical College of Texas for analysis of road materials; providing State registration for all motor vehicles and motorcycles, the issuance of a license in evidence thereof, fixing the fees and charges therefor, and providing that such fees and charges shall constitute a part of the fund for the support of the State Highway Department; and for the distribution to the counties of a part of the monies received from such registration fees; providing for the furnishing of identification numbers to motor vehicles and motorcycles, and for furnishing distinguishing seals for the year for which issued to such motor vehicles and motorcycles; Prescribing penalties for the violation of the provisions of this Act; making an appropriation to inaugurate the work of the Department as provided in this Act; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. There is hereby created a department of the public service of the State, to be known as the State Highway Department, the administrative control of which shall be vested in the members of the State Highway Commission and the State Highway Engineer hereinafter provided for in this act. The said department shall be furnished with adequate office room at the State Capitol, which office shall be the repository of all records of the department.

Sec. 2. The Governor shall, within sixty days after this act becomes effective, by and with the advice and consent of the Senate, appoint three citizens of the State as a Board of Highway Commissioners, hereinafter referred to as the State Highway Commission or the Commission. The term of office of the members of the Commission shall be for a period of two years, except that the members of the Commission first appointed shall serve until February 15, 1919, or until their successors shall have been appointed and have qualified. All vacancies in the membership of the Commission shall be filled in the same manner as is prescribed for the original appointment.

Sec. 3. The Governor, in making the appointment of Highway Commissioners, shall designate one as a chairman of the Commission. The duties of the members of the Commission shall be such as the administration of the provisions of this act require; attendance upon all regular meetings of the Commission as provided in this act, and such special meetings as the rules that may be adopted by the Commission for its guidance may provide, or that may be called by the chairman of the Commission. The Commission shall formulate plans and policies for the location, construction and maintenance, in co-operation with the counties of the State, or under the direct supervision and control of the State Highway Department, of a comprehensive system of State highways and public roads, and shall perform such other duties as may be conferred upon them by law. The members of the Commission shall be allowed actual and necessary expenses incurred in the performance of the duties of their said offices, and shall each receive a per diem of ten (\$10.00) dollars for each day actually devoted to the work of the department, the aggregate of such per diem, in no case to exceed the sum of one thousand (\$1,000.00) dollars for each member in any one calendar year; such expense and per diem to be paid from the funds provided for by this act. Two members of the Commission shall constitute a quorum necessary to the transaction of business. Regular meetings of the Commission shall be held once each month at the State Capitol. Biennially, a report of the work of the Commis-

sion shall be submitted to the Governor and the Legislature, together with the recommendations of the Commission and the recommendations of the State Highway Engineer. Provided, that a quarterly statement shall be prepared and filed in the records of the department, and a copy transmitted to the Governor, which shall contain an itemized statement of all moneys received and from what source, together with an itemized statement of all moneys paid out and for what purpose; and provided further, that these reports shall be treated as public documents and open to public inspection.

Sec. 4. Each member of the State Highway Commission shall file his oath of office with the Secretary of State and execute a bond payable to the State of Texas, to be approved by the Governor, conditioned upon the faithful discharge of duty in office, in the sum of five thousand (\$5,000.00) dollars each, the premium for which bonds shall be paid out of the funds in this act provided for.

Sec. 5. As soon as practicable after their qualification for office, the State Highway Commission shall elect a State Highway Engineer, who shall be a competent civil engineer and graduate of some first class school of civil engineering, experienced and skilled in highway construction and maintenance, and who shall receive an adequate salary in the discretion of the Commission, and shall be allowed actual traveling and other expenses while absent from the State Capitol in the performance of duty under the direction of the Commission; and who shall hold his position until removed by the Commission. Before entering upon his duties, the State Highway Engineer shall execute a bond payable to the State of Texas in such sum as in the judgment of the Commission may be necessary, conditioned upon the faithful performance of his duties, such bond to be approved by the Commission and filed with the Secretary of State. The Highway Engineer shall act with the Highway Commission in an advisory capacity, without vote, and he shall submit reports to the Commission quarterly, annually and biennially, setting forth in detail the progress of public roads construction, and a statement detailing the expenditures therefor, under the direction of the department as provided in this act.

Sec. 6. The State Highway Commission shall establish and make public proclamation of all rules and regulations for the conduct of the work of the department as may be deemed necessary, not inconsistent with the provisions of this act; and the department shall maintain a record of all proceedings and official orders and keep on file copies of all road plans, specifications and estimates, prepared by the department or under its direction.

Sec. 7. The State Highway Department shall collect information

and compile statistics relative to the mileage, character and condition of the public roads in the different counties of the State, and the cost of construction of the different classes of roads in the various counties. It shall investigate and determine the methods of road construction best adapted to the different sections of the State, and shall establish standards for the construction and maintenance of highways, bridges and ferries, giving due regard to all natural conditions and to the character and adaptability of road building material in the different counties. The department may, at all reasonable times, be consulted by county and city officials for any information or assistance it can render with reference to the highways within such counties or cities, and it shall be the duty of the State Highway Department to supply such information when called for by city or county officials; and it may call upon all such officials for any information necessary to the performance of its duties under this act. Upon request of the commissioners' court of any county, the State Highway Department shall consider and advise concerning general plans and specifications for all road construction to be undertaken from the proceeds of the sale of bonds or other legal obligations issued by a county, or by any sub-division or defined district of any county; and it shall be the duty of the commissioners' court, county road superintendent, or official acting under the authority of the commissioners' court, to obtain all the available information and advice from the office of the State Highway Department relative to road construction and maintenance suitable to the county, political sub-division or defined district in which such roads are to be constructed before any of the proceeds from such bond issues are expended by, or under the direction of the commissioners' court.

Sec. 8. The State Highway Department shall adopt such rules as are found necessary to determine the fitness of engineers making application for highway construction work and upon the formal application of any county or organized road district thereof, or of any municipality, the Commission may recommend for appointment a competent civil engineer, and graduate of some first class school of civil engineering, skilled in the knowledge of highway construction and maintenance.

Sec. 9. The State Highway Engineer shall, as soon as practicable after qualification for duty, cause to be made and kept in form convenient for examination in the office of the department, a complete road map of the State as represented in the road construction of the various counties, and such map shall be regularly revised as construction proceeds in the different counties.

Sec. 10. The commissioners' court of each county in the State, within twelve months after this act becomes effective, shall have prepared county road maps in duplicate, showing the approximate location of all public roads within the county. Such county maps shall further show the location at the county lines of connecting roads, of all adjoining counties, or in the absence of such connecting roads, the commissioners' court shall submit a statement setting forth the public importance of such connecting roads in such adjoining county or counties. The commissioners' court of each such county also shall designate such of the roads in the said county as would, in the judgment of the court, represent part of an adequate system of State highways to the various market and business centers of the State, and connect such principal traffic centers. One of the said county maps shall be filed in the office of the county clerk of each county, and the other map, duly certified by the commissioners' court, shall be filed with the State Highway Department. The county commissioners' court shall, at the time of filing such county map, furnish the State Highway Department a statement of the location in such county, estimated extent and availability of all material deemed suitable for the building of roads. Should the commissioners' court of any county for any reason fail to provide such maps and information to the State Highway Department within the time specified, the State Highway Engineer shall have such maps and information of such county prepared under his supervision, and the committee shall be empowered to deduct the expenses thereof from the first allotment of funds to such county to accrue from registration fees of motor vehicles under the provisions of this act. Should the public roads of any two adjoining counties representing a necessary part of the system of State highways, as designated by the State Highway Department in accordance with the provisions of this act fail to connect, the State Highway Engineer shall make or cause to be made, an investigation in the respective counties and report to the Commission, which shall notify the commissioners' court of such county or counties of what is necessary to complete the connection of such State highways, and if such county or counties shall fail to make or complete such connections on roads, which constitute a part of the system of State highways within six months after notice has been given by the State Highway Department, the Commission shall be empowered to direct the State Highway Engineer to complete such connection, and the Commission shall be empowered to deduct the expense thereof from the allotment of funds to such county or counties to accrue from registration fees of motor vehicles and motorcycles as hereinafter provided for in

Section 23 of this act; the expense of maintenance thereafter to devolve upon such county or counties.

Sec. 11. The State Highway Engineer shall prepare, under the direction and with the approval of the Commission, a comprehensive plan providing a system of State highways, and it shall be the duty of the Commission to advance the construction of such State Highways in co-operation with the counties of the State, or under the direction, supervision and control of the State Highway Department, as the necessary funds for construction may be available. A copy of such plans of State highways shall be furnished by the department to each county commissioners' court in the State, to be displayed in the office in which the road records of the county are kept.

Sec. 12. Whenever the commissioners' court of any county shall desire, and is prepared, to construct one or more miles of public roads constituting a part of the system of State highways as designated by the department, such court may make application for an allotment of State aid from the State highway fund, and if such application is accompanied by plans, profiles and estimates prepared in accordance with the requirements of the State Highway Engineer, the Commission shall file such application in the order in which it is received; and when such roads shall be constructed according to specifications and under the supervision of the Highway Engineer, the Commission shall make an allotment of aid from any moneys available in the State highway fund, not to exceed one-fourth of the cost of construction; provided, such State aid may not be expended to aid in constructing more than ten miles of road in any county during any one year. In counties in which the assessed valuation of property, in the judgment of the Commission, does warrant the construction of sections of the system of State highways necessary to provide the State with trunk roads, or to connect market centers of the State as provided in this act, the Commission may, in its discretion, increase such allotment of State aid not to exceed one-half of the cost of constructing not more than ten miles of such part of the system of State highways in each of such counties in one year. All parts of the system of the State highways that may be constructed with State aid, as provided in this section, shall be maintained at the expense of the county in which such part of the highway is located, in accordance with plans approved by the State Highway Department, and failure to maintain such sections of State highway, shall forfeit any further State aid until such maintenance work shall have been done.

Sec. 13. The laboratories maintained at the Agricultural and

Mechanical College of Texas and at the University of Texas shall be at the disposal and direction of the State Highway Engineer for the purpose of testing and analyzing road and bridge material, and it shall be the duty of those in charge of said laboratories to co-operate with and assist the State Highway Engineer, to the end that the best interests of the State may be advanced in this connection. The Commission shall purchase all necessary supplies and materials required in the administration of this act, and shall have authority to employ all clerical and other assistance necessary to carry out the provisions of this act, and it shall pay such labor the reasonable and customary price per day, month or year for the class of work performed.

Sec. 14. The labor of State prisoners may be utilized in construction or maintenance work on any road designated by the State Highway Department as forming a part of the system of state highways, upon such terms as may be agreed upon by the State Highway Commission and the State Prison Commission and approved by the Governor of Texas.

Sec. 15. Any funds for public road construction in the State of Texas appropriated by the United States Government, shall be expended by and under the supervision of the State Highway Department only upon a part of the system of State highways.

Sec. 16. In order to provide funds to effectuate the provisions of this act, on and after the first day of July, 1917, and annually thereafter on and after the first day of January, every owner of one or more motorcycles or motor vehicles in this State, shall file in the office of the State Highway Department, on a blank provided by the department, application for registration for each motorcycle or motor vehicle owned or controlled by him. Such application for registration shall state the name of the owner and his address and such brief description of such motorcycle or motor vehicle to be registered by him as may be prescribed by the State Highway Department. Each application shall be accompanied by the requisite fee for semi-annual or annual registration as provided for in this act, which registration fee shall be for each motorcycle three (\$3.00) dollars, and for each motor vehicle, other than motor vehicles intended for commercial uses, and carrying or intended to carry a total gross load of more than one thousand (1,000) pounds per wheel, the registration fee shall be thirty-five cents per horsepower as determined by the standard gauging power employed by the Association of Licensed Automobile Manufacturers; but no such motor vehicle shall be registered for a less sum than seven (\$7.50) dollars and fifty cents. The term, "motorcycle," shall include only

those motor vehicles with or without pedals and saddles and with the driver sitting astride. The term, "motor vehicle," shall include all vehicles propelled by mechanical power. For each commercial vehicle, the annual license fee shall be based upon the carrying capacity per wheel, as follows:

Weight in Pounds Per Wheel	Fee
1,001 to 2,000	\$ 20.00
2,001 to 4,000	40.00
4,001 to 6,000	60.00
6,001 to 8,000	150.00
8,001 to 10,000	300.00

For loads greater than 10,000 pounds per wheel, license fees shall be charged for each vehicle at the additional rate of five hundred (\$500.00) dollars for each one thousand (1,000) pounds increase in weight, or fraction thereof; provided, however, that no load greater than eight hundred (800) pounds per inch width of tire per wheel shall in any case be permitted; and provided further, that no vehicle of a total gross weight of more than fourteen tons shall be licensed by the Highway Commission.

The State Highway Department shall formulate rules for the determination of weights governing license fees established herein for commercial vehicles; these rules and the rates fixed by this section for commercial vehicles may be changed by the State Highway Department; provided that applications for license of commercial vehicles under the provisions of this section shall state whether for operation in one or more counties, naming them, and if more than one, the department shall distribute one-half the license fee from such vehicle among the counties in which such vehicle is operated, on a mileage basis. A commercial vehicle within the terms of this act, shall be one carrying passengers or freight for hire. Such motor vehicles as run upon rails or tracks, shall not be subject to the provisions of this act.

Sec. 17. Upon the receipt of an application for registration of a motor vehicle or motorcycle, accompanied by the proper fee, as hereinbefore provided for, the State Highway Department shall cause such motor vehicle or motorcycle to be registered in a registration book or card index kept for the purpose, and without additional charge shall cause to be furnished the owner of each motor vehicle or motorcycle so registered, a certificate of registration, which certificate shall be in the form of a card, which may be carried in the pocket, and which certificate shall contain the descriptive number

so assigned to the owner of each motor vehicle or motorcycle so registered, stating the name and address of the owner, and a brief description of such motor vehicle or motorcycle, together with the name of the manufacturer and the horsepower motorpower, and such certificate shall at all times be carried upon such motor vehicle or motorcycle and subject to examination on demand of the proper officers; and the department, without additional charge, shall also cause to be issued to the owner of such motor vehicle or motorcycle, a distinguishing seal of aluminum or other suitable material, of such size and form as the Commission shall determine, having stamped thereon the words, "Registered Motor Vehicle, Texas," with the year of issue inserted therein, which seal shall be of a distinctly different color for each calendar year, and shall be conspicuously displayed on the radiator of such motor vehicle, or on the front of such motorcycle, and there shall be at all times a marked contrast between the color of the letters and figures and the background of the seal; provided, however, the same combination of colors may be repeated after five years. Provided, further, that road rollers and other road building equipment owned and operated by municipalities, counties or sub-divisions of counties, street sprinklers, fire engines or apparatus, patrol wagons, ambulances, owned by municipalities or counties, motor vehicles owned and operated under the direction and exclusively in the official service of the United States Government, State of Texas, or any county or city thereof, shall not be required to pay the fees herein stipulated for motor vehicles, but application shall be made for and a registration number secured for such motor vehicles, and each year application for the distinguishing seal provided by the department for that year, shall be made.

Sec. 18. On and after July 1, 1917, every motor vehicle except motorcycles, shall at all times, while being used or operated upon the public highways of this State, have displayed in a conspicuous place and manner, both upon the front and rear of such motor vehicle, a plate or marker bearing the registration number assigned such motor vehicle by the State Highway Department, and each operator of a motorcycle shall in like manner have displayed upon his machine, one plate marker bearing the registration number of such motorcycle; and the State Highway Commission shall furnish such number plates without charge for the first registration, and plates that may have to be replaced, shall be at the expense of the owner of such motor vehicle or motorcycle. Such motor vehicles and motorcycles shall at all times display the distinguishing seal to be provided by the department for each year, and the said num-

ber plates and the seal shall conform to such requirements as may be prescribed by the department.

Sec. 19. The first registration of motor vehicles and motorcycles herein provided for shall become effective on the first day of July, 1917, and shall be for the one-half year ending December 31, 1917. Each and every person owning a motor vehicle or motorcycle in this State on July 1, 1917, or who shall purchase or assume control of a motor vehicle or motorcycle in this State subsequent to July 1, 1917, and before December 31, 1917, shall immediately file an application for registration with the State Highway Department, and such registration shall be effective from the day of the filing of such application and shall expire the following 31st day of December, 1917; and all such applications for registration made prior to the 31st day of December, 1917, shall be required to pay one-half the annual fees required by the provisions of this act. Thereafter, registrations shall begin with the first day of January of each year and end with the 31st day of December, and all applications for registration of motorcycles or motor vehicles filed on and after January 1, and before June 30th of any year, shall be required to pay the annual fee, and all applications for registration filed on and after July 1, and before December 31st of any year, shall pay one-half of the annual registration fee.

Sec. 20. When any person, other than a dealer, sells a vehicle embraced in this act, he shall endorse upon his certificate of registration a written transfer of the same and the purchaser of such motor vehicle shall send the State Highway Department a notification of such transfer with the names and address in full of such purchaser, together with the transfer fee of one (\$1.00) dollar, and the department shall enter upon its books the fact of such transfer and the name and address of the purchaser, who shall be regarded as the owner thereof and amenable to the provisions of this act.

Sec. 21. Any manufacturer of, or dealer in, motor vehicles in this State may, in lieu of registering each machine he may wish to show or demonstrate on the public highways, apply for registration and secure a general distinguishing number, which may be attached to any motor vehicle or motorcycle he sends temporarily upon the road. The annual fee for such dealers' registration of a general distinguishing number shall be fifteen (\$15.00) dollars, and additional number desired by any dealer, not exceeding five, will be assigned and registered for a fee of five (\$5.00) dollars each. All the other provisions of this act shall apply in case of dealers' registration.

Sec. 22. Motor vehicle owned by citizens of other States temp-

porarily in this State, will be exempt from the provisions of this act for a period of ninety days, if they show the State Highway Department that they have complied with similar laws of some other State, or of a municipality of another State, providing adequate identification of such motor vehicle or motorcycle. Provided, however, that if such citizen of another State, shall remain in Texas longer than thirty days, he shall execute authority to the chairman of the State Highway Commission to accept service in his behalf in any action that may be brought against him in the courts of this State, because of the use in this State of such motor vehicle or motorcycle. Provided, further, that if such citizen of another State shall remain in Texas longer than thirty days, he shall be required, and it shall be his duty, to apply for and to receive from the State Highway Commission a seal bearing such identification as the Commission may require, for which seal a fee of one (\$1.00) dollar will be required.

Sec. 23. All funds coming into the hands of the Highway Commission, derived from the registration fees hereinbefore provided for, or from other sources, as collected, shall be deposited with the State Treasurer to the credit of a special fund designated as "The State Highway Fund," and shall be paid only on warrants issued by the State Comptroller upon vouchers drawn by the chairman of the Commission and approved by one other member of the Commission, such vouchers to be accompanied by itemized sworn statements of the expenditures, except when such vouchers are for the regular salaries of the employees of the Commission. The said State Highway fund shall be expended by the State Highway Commission for furtherance of public road construction and the establishment of a system of State highways, as contemplated and set forth in this act, provided, that semi-annually, on the first days of September and March respectively, beginning with September 1, 1917, one-half of the gross collections of registration fees from all motor vehicles and motorcycles received from the several counties of the State by the State Highway Department, as provided in this Act, shall be remitted to the county treasurer in the counties from which such collections were respectively made; and provided further, that such allotment of registration fees to the counties shall constitute a special fund to be expended by or under the direction of the commissioners' courts of the respective counties in the maintenance of the public roads of such counties in accordance with plans approved by the State Highway Department.

Sec. 24. Any person owning and operating a motor vehicle or motorcycle on the public highways of this State after the taking

effect of this act, without the number plates displayed thereon, in accordance with the requirements of this act, or anyone owning and operating a motor vehicle or motorcycle, without the distinguishing seal provided by the department for each year, shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than ten (\$10.00) dollars nor more than twenty-five (\$25.00) dollars for each violation, and each day such motor vehicle or motorcycle is operated upon the highways of the State in violation of the provisions of this act, shall constitute a separate offense. Any person obtaining a distinguishing seal, as provided for herein, from any source other than the State Highway Department or its authorized agents, or except as herein provided, or any person not authorized by the State Highway Department, who sells or offers to sell any seal or number in imitation of those furnished by the State Highway Department, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not less than twenty-five (\$25.00) dollars; provided, that all prosecutions under this act shall be in the county where such person may live or in which such person may operate such unnumbered or unmarked vehicle, or may sell, or offer for sale, such number or seal; and provided further, that all sums arising from the imposition and collection of fines under this act, shall constitute a special maintenance fund to be expended upon the public roads of the respective counties where collected.

Sec. 25. The certificate of registration and numbering for purposes of identification and the fees hereinbefore provided for, shall be in lieu of all other similar registrations heretofore required by any county, municipality, or other political sub-division of the State, and no such registration fees of other like burdens shall be required of any owner of any motor vehicle or motorcycle by any county, municipality, or other sub-division of the State. But this provision shall not affect the right of incorporated cities and towns to license and regulate the use of motor vehicles for hire in such corporation; provided that nothing in this act shall anywise authorize or empower any county or incorporated city or town in this State to levy and collect any occupation tax or license fees on motorcycles, automobiles or motor.

[H. B. No. 2, as enrolled, contains duplicate pages covering the same portions of Sections Nos. 24 and 25, except that near the end of the first Section No. 25 the word "automobiles" appears, while in the second Section No. 25 said word does not appear.]

This act, without the number plates displayed thereon, in accordance with the requirements of this act, or anyone owning and operating a motor vehicle or motorcycle, without the distinguish-

ing seal provided by the department for each year, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than (\$10.00) dollars nor more than twenty-five (\$25.00) dollars for each violation, and each day such motor vehicle or motorcycle is operated upon the highways of the State in violation of the provisions of this act, shall constitute a separate offense. Any person obtaining a distinguishing seal, as provided for herein, from any source other than the State Highway Department or its authorized agents, or except as herebefore provided, or any person not authorized by the State Highway Department, who sells or offers to sell any seal or number in imitation of those furnished by the State Highway Department, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not less than twenty-five (\$25.00) dollars; provided, that all prosecutions under this act shall be in the county where such person may live or in which such person may operate such unnumbered or unmarked vehicle, or may sell, or offer for sale, such number or seal; and provided further, that all sums arising from the imposition and collection of fines under this act, shall constitute a special maintenance fund to be expended upon the public roads of the respective counties where collected.

Sec. 25. The certificate of registration and numbering for purposes of identification, and the fees hereinbefore provided for shall be in lieu of all other similar registrations heretofore required by any county, municipality, or other political sub-division of the State, and no such registration fees, or other like burdens, shall be required of any owner of any motor vehicle or motorcycle by any county, municipality or other sub-division of the State. But this provision shall not affect the right of incorporated cities and towns to license and regulate the use of motor vehicles for hire in such corporation; provided that nothing in this act shall in anywise authorize or empower any county or incorporated city or town in this State to levy and collect any occupation tax or license fees on motorcycles, motor vehicles or motor trucks.

Sec. 26. The sum of ten thousand (\$10,000.00) dollars, or so much thereof as may be necessary, is hereby appropriated out of the general revenue of the State, not otherwise appropriated, to purchase the necessary office equipment, to provide the identification numbers and distinguishing seals herein required for motor vehicles and motorcycles for use on or before July 1, 1917, and to meet the general expenses of the said State Highway Department up to and including June 30, 1917; and such sum as may be drawn from the State Treasurer, shall be repaid to the State from the collections of the first year.

Sec. 27. All laws or parts of laws in conflict with the provisions of this act are hereby repealed; and if any section, subdivision or clause of this act, shall be held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Sec. 28. The imperative need of measures calculated to secure greater efficiency and durability in public road construction and greater economy in the expenditure of the large sums of public funds annually employed in road work, and the fact that Texas has no Highway Department vested with power to encourage and direct the development of a system of State highways, creates an emergency and an imperative public necessity for the suspension of the constitutional rule requiring bills to be read on three several days, and that this act take effect and be in force from and after its passage and it is so enacted.

[Note.—H. B. No 2 was passed by the House on February 7, 1917, by the following vote: Yeas 90, nays 29; and passed the Senate with amendments on February 23, 1917, by the following vote: Yeas 21, nays 1. That the House refused to concur in Senate amendments on March 2, 1917, and requested appointment of free conference committee; that the Senate granted request of House for appointment of free conference committee, and that the report of the free conference committee was adopted by the House on March 14, 1917, by the following vote: Yeas 96, nays 23, and that the report of the free conference committee was adopted by the Senate on March 15, 1917, by the following vote. Yeas 22, nays 2.]

Approved April 4, 1917.

ADDITIONAL AD VALOREM SCHOOL TAX IN CITIES AND TOWNS.

[S. B. No. 470.]

Chapter 169.

An Act to amend Article 2877, 2878, 2879 and 2880, Chapter 17, Title 48 of the Revised Civil Statutes of the State of Texas, 1911, relating to the assessment, levy and collection of an additional ad valorem tax for the maintenance and support of the public free schools and the erection and equipment of public school buildings in cities and towns which have heretofore or which may hereafter assume the control of the public schools within their limits; repealing Article 2876, Chapter 17, Title 48, Revised Civil Statutes of the State of Texas, 1911; providing for an election to determine whether such additional tax shall be levied and collected, providing for the assessment and collection of same, the pay-

ment and distribution of said tax and re-numbering sections; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. That Articles 2877, 2878, 2879 and 2880 of Chapter 17, Title 48 of the Revised Civil Statutes of Texas, 1911, be amended so as to hereafter read as follows:

Article 2876. The city or town council or board of aldermen of any city or commission of any city, town or village, whether incorporated under any act of the Congress of the Republic or the Legislature of the State of Texas, or under any act of incorporation whatever, shall have power by ordinance to annually levy and collect such advalorem taxes for the support and maintenance of public free schools and for the erection and equipment of public free school buildings in the city or town where such city or town is a separate and independent school district; provided that no such tax shall be levied until an election shall have been held, at which none but property taxpayers, as shown by the last assessment rolls, who are qualified voters of such independent school districts shall vote and a majority of those voting shall vote in favor thereof. The proposition submitted may be for such a rate of advalorem tax not exceeding such per cent as may be voted by a majority vote of all votes cast at any such election. One election, and no more, shall be held thereafter in any one calendar year to ascertain whether a school tax shall be levied. If the proposition is carried the school tax shall be continued to be annually levied and collected for at least two years, and thereafter, unless it be discontinued at an election held to determine whether the tax shall be continued or discontinued, at the request of fifty property taxpayers of such independent school district. When the tax is continued no election to discontinue it shall be held for two years, when the tax is discontinued no election to levy a tax shall be held during the same year.

Article 2877. If the vote of the taxpayers is in favor of said tax, then it shall be the duty of the council or board of aldermen, annually thereafter, to levy upon the taxable property in the limits of such district, in accordance with the usual assessment of taxes for municipal purposes, such additional tax as may be necessary for the support and maintenance of the public schools and for the erection and equipment of public school buildings for nine months in the year not to exceed the rate of tax voted.

Article 2878. In a city or town that has assumed the exclusive control of the public free schools within its limits and has decided under the laws providing therefor that a special tax shall be levied

for the support and maintenance of such public free schools and the erection and equipment of public free school buildings, the mayor and council or board of aldermen of such city or town shall annually assess and levy such tax by ordinance duly passed and approved in the same manner as is required in the assessment and levy of taxes for general purposes in such city or town. In a city or town which has voted upon and directed the levy of a special tax the mayor or council or board of aldermen or commission of such city or town shall annually levy such rate of tax for public school purposes and for the erection and equipment of public school buildings not exceeding the rate of tax voted for the support and maintenance of the public free schools and for the erection and equipment of public school buildings for the term as required by law; but in a city or town that has voted upon and decided at an election held for that purpose that a specified rate of tax shall be assessed and levied in such city or town for the support and maintenance of its public free schools, and for the erection and equipment of public school buildings the mayor and council or board of aldermen or commission of such city or town shall have no discretion in fixing the rate at which such tax shall be levied, but shall assess and levy the same at the rate fixed in the proposition as submitted and adopted by the qualified voters of such city or town at the election held for that purpose.

Article 2879. In a city or town that may now or hereafter constitute an independent school district, and where a special tax for school purposes has been voted by the people or provided by special charter, it shall be the duty of said board of trustees to determine what amount of said tax, within the limit voted by the people or fixed by special charter, will be necessary for the maintenance and support of the school and for the erection and equipment of public school buildings for each current year; and it shall become the duty of the city council, board of aldermen or city commission, upon the requisition of said board of trustees, to annually levy and collect said tax, as other taxes are levied and collected; and said tax, when collected, shall be placed at the disposal of the said school board, by paying over monthly to the treasurer of said board the amount collected for the support and maintenance of the school and for the erection and equipment of public school buildings in such district, to be used for the maintenance and support of the public free schools and for the erection and equipment of public school buildings in such district.

Article 2880. All of Article 2876, Chapter 17, Title 48 of the Revised Civil Statutes of the State of Texas, 1911, is hereby repealed.

Sec. 2. Owing to the crowded condition of the calendar and the demand for the relief of the independent school districts in cities and towns creates an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, is hereby suspended, and that this act take effect and be in force from and after its passage, and it is so enacted.

Approved March 30, 1917.

Takes effect 90 days after adjournment.

AUTHORIZING CITIES TO COLLECT TAX FOR PARK PURPOSES.

[S. B. No. 166.]

Chapter 79.

An Act to authorize the city council, board of commissioners or city manager of any incorporated city in this State to levy and collect a tax not to exceed five cents on each \$100.00 of assessed valuation of the city for one year for the purchase and improvement of lands for city parks, and providing the manner of acquiring lands for park purposes, and providing for the management and control of said city parks, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. That the city council, board of commissioners or city manager of any incorporated city in this State is hereby authorized to levy and collect a tax not to exceed five cents on each \$100.00 of assessed valuation of the city for the purchase and improvement of lands for use as city parks.

Sec. 2. The city parks provided for in this act shall not exceed two in number for each two thousand inhabitants; and it is further provided, that where the city council, board of commissioners or city manager desires to establish more than one such city parks it shall be their duty to locate such parks in widely separated portions of the city so as to place them as near as practicable within the convenient reach of all the citizens of the city.

Sec. 3. Said city Council, board of commissioners or city manager shall have full power and control over any and all city parks as provided for in this act, and they shall have the right to levy and collect an annual tax sufficient in their judgment to properly maintain such parks, not to exceed five cents on each one hundred dollars of assessed valuation of the city.

Sec. 4. The improvement of lands for use as city parks, as provided for in Section 1 of this act authorizes the city council, board of commissioners or city manager to build and construct pavilions and such other buildings as they may deem necessary, to lay out and open driveways and walks, to pave the same or any part thereof, in such manner and of such material as said city council, board of commissioners or city manager may deem advisable; to set out trees and shrubbery, construct ditches or lakes, and to make such other improvements as they may deem proper and necessary.

Sec. 5. City parks established under the provisions of this act shall remain open for the free use of the public under such reasonable rules and regulations as the city council, board of commissioners or city manager may prescribe. But no person, firm or association of persons shall have the right to offer for sale or barter, exhibiting anything or conduct any place of amusement where a fee is charged within said parks without first obtaining the consent of the city council, board of commissioners or city manager or its duly authorized agent or agents, paying for such privilege or concession such sum as may be agreed upon by the person, firm or association of persons and the city council, board of commissioners or city manager, or its duly authorized agent or agents; and provided further, that all revenues derived from the sale of such rights, privileges or concessions shall go into a fund for the maintenance of said parks.

Sec. 6. The fact that the regular legislative session will likely last but sixty days, that the calendar is already in a crowded condition, and that it is essential to the welfare of the people of this State that this measure shall at once become effective creates an emergency and imperative public necessity, requiring that the constitutional rule, which provides that bills shall be read on three several days, be suspended, and the same is hereby suspended, and this act take effect and be in force from and after its passage, and it is so enacted.

Approved March 15, 1917.

Takes effect 90 days after adjournment.

INDEX.

	SEC.	PAGE.
ABSTRACTS—		
Of assessor, to be kept in office.....	313	241
Land commissioner to furnish to assessors.....	308	237
ACCOUNT—		
Of occupation tax receipts furnished commissioners.....	95	97
Final, not to be allowed until tax paid.....	258	203
ADMINISTRATORS—		
Appointment of, dispensed with, when.....	259	203
AD VALOREM TAX—(See <i>Taxes</i>.)		
Levy for Confederate soldiers.....	20	40
Board to calculate (Chap. VII).....	.....	129
ADVERTISEMENT—		
Of sales of unrendered lands by collector.....	433	314
Costs of, in sale of unrendered lands by collector.....	442	317
Of lands omitted from tax rolls.....	464	348
Of lands on delinquent tax records, how.....	448	323
List of delinquent lands to be annually.....	453	335
AFFIDAVITS—		
Of officers of corporations to be made.....	129	119
Of county or district attorneys in suits against delinquent taxpayers	459	341
AGENTS—		
Rendition of property by.....	265	212
How shall list property for others.....	272	216
ANNUALLY—		
Unpaid taxes to be listed by assessor.....	453	335
ANNUAL REPORTS—		
Of gross receipts by express companies.....	101	100
APPEAL—		
Right of, from action of Comptroller.....	182	155
APPENDIX—		
See Chapter XXXIII herein at page.....	.....	590
APPLICANTS—		
For license to sell liquor to be furnished by clerk.....	212	182
For license to sell non-intoxicants to pay in advance.....	216	186
For cold storage license, procedure.....	220	189

INDEX.

609

APPOINTMENT—	SEC.	PAGE.
Of administrators, dispensed with, when.....	259	203
APPRAISERS—		
To be appointed under inheritance tax law.....	249	200
APPROPRIATIONS—		
Method of making.....	6	18
Not to be diverted.....	7	20
ASSESSING—(See <i>Assessment</i>.)		
Railroad property, how and where.....	8	20
Of property for taxes, generally (Chap. XIV).....		231
ASSESSMENT—		
Of taxes in counties, cities and towns.....	24	55
Of personal property by banker or broker.....	277	219
Of real estate by banks.....	278	222
No reduction in, on account of indebtedness.....	279	223
Of property by railroads.....	280	224
Of corporate property.....	282	225
Of property in name of owner.....	283	226
Of United States paper money.....	288	230
When shall be made.....	303	236
Irregular, to be considered valid.....	304	236
Notice of, how served.....	305	236
Procedure in, when owner refuses to list.....	306	237
Of property, on failure to obtain statement.....	307	237
Blanks for, how to be filled.....	310	238
Of blocks and lots in cities.....	311	238
Manner and form of making generally.....	318	242
Of property, not rendered.....	319	245
To be passed on by board of equalization.....	320	247
Notice to taxpayers of raise by board.....	320	247
Of real property for previous years.....	321	251
Of back taxes on personal property.....	322	252
Of unlisted real property.....	323	252
May be proven how.....	325	254
Equalization of	326	254
Boards may equalize without complaint.....	327	255
Penalty for neglect of duty in making.....	331	258
Lists to be furnished board of equalization.....	333	259
Rolls to be made in triplicate.....	334	259
Lists of to be filed with county clerk.....	338	261
Rolls, how distributed and filed.....	339	261
Commissions for making.....	340	261
Compensation for, how made.....	341-342	262
Of non-residents in unorganized counties.....	344	263
Of lands in unorganized counties.....	345	263
By State Comptroller.....	346-347-348	264
Appeal from, when made by Comptroller.....	350	265
Of back taxes on unrendered lands.....	424	312

ASSESSMENT—(Cont'd.)	SEC.	PAGE.
Of property omitted from tax rolls.....	464	348
Commissioners' court empowered to reduce, when.....	467	349
Made in bulk, validated, when.....	469	351
Of unrendered lands, how made.....	473	352
ASSESSORS—		
Constitutional provision for election of.....	14	34
Duty of, to certify value of property to Comptroller.....	30	66
State Tax Board to certify to.....	161	137
Election and term of office of.....	289	232
Manner of filling vacancy in office of.....	290	232
Oath and bond of.....	291	232
Purview of bond of.....	292	233
New bond, shall be given by, when.....	293	233
Shall give bond for county taxes.....	294	233
May appoint deputies.....	295	233
Authority of deputies of.....	296	233
Empowered to administer oaths.....	297	234
Oath to be administered by.....	298	234
Penalty for failure to administer oath.....	300	235
Shall require taxpayers to make oath.....	302	236
When shall make assessments.....	303	236
How notice shall be served by.....	305	236
Procedure by, when owner refuses to list property.....	306	237
Duty of, upon failure to obtain statement.....	307	237
Land Commissioner to furnish abstracts to.....	308	237
Books to be furnished—how filled.....	309	238
How blanks shall be filled by.....	310	238
How shall assess lots and blocks.....	311	238
Duties of, as to lots and blocks.....	312	241
To keep abstracts in office.....	313	241
Shall enter certain lands omitted on abstracts.....	314	241
Shall procure certificate from board of equalization.....	315	241
Substitute to be employed, when.....	316	242
How shall assess property, generally.....	318	242
How shall assess unrendered property.....	319	245
How shall assess property for previous years.....	321	251
How shall assess back taxes.....	322	252
To follow certain instructions.....	324	253
Penalty for neglect of duty by.....	328	256
Oath to be taken by.....	329	256
Shall be removed from office when.....	331	258
To furnish list of delinquents.....	332	258
To submit lists to board of equalization.....	333	259
To make out rolls in triplicate.....	334	259
To make out rolls of unrendered property.....	335	260
Duty to add up columns.....	336	260
Return and oath of.....	337	260
To file lists in clerk's office.....	338	261
How shall distribute rolls.....	339	261
Commissions and compensation of.....	340	261

ASSESSORS—(Cont'd.)	SEC.	PAGE.
Compensation of, how paid by State.....	341	262
Compensation of, how paid by county.....	342	262
Penalty for failure to return tax rolls.....	343	263
How shall assess lands of non-residents in certain counties.....	344	263
How shall assess lands in unorganized counties.....	345	263
To list unpaid taxes annually.....	453	335
To post notice, etc., when.....	472	352
Fees of, in certain instances.....	476	353
Fees of office of (Chap. XXVII).....	.....	497
ASSIGNMENT—		
Tax lien superior to, when.....	388	286
ASYLUMS—		
Support of, Constitutional provision for.....	19	39
ATTACHMENT—		
Tax lien superior to, when.....	388	286
ATTORNEY GENERAL—		
Penalties may be recovered by.....	121	114
Duty of, to sue for franchise tax of corporations.....	143	127
Shall prosecute injunctions against sale of liquors.....	232	194
To file suit for removal from office of certain officers, when	331	258
Rulings of, in regard to voting (notes).....	516	379
AUCTIONEERS—		
Annual occupation tax on.....	38	75
AUTOMATIC TAX BOARD—		
How constituted	29	66
Method followed by.....	31	67
Power of, to consider fines collected (note).....	.....	71
AUTOMOBILES—		
Law regulating and creating Highway Commission.....	.....	590
AVAILABLE FREE SCHOOL FUNDS—		
What moneys shall constitute.....	881	535
County school fund; income from lease of land.....	882	535
Certain locations of public validated.....	883	535
Lands sold for taxes to State, and bid in by Comptroller....	884	536
All unappropriated lands declared part of permanent.....	885	536
One-half of public domain added to permanent fund, etc....	886	537
Lands to be set aside as asylum lands.....	887	537
To take land for; exercise right of eminent domain.....	888	538
Interest, sinking fund on bonds; levy of taxes for.....	889	539
Cession of State lands for the benefit of.....	890	539
City and county treasurers custodian of, exclusive use of....	891	540
Bonds to be issued in cases of counties, cities and towns....	892	540

BACK TAXES—(See <i>Delinquent Taxes.</i>)	SEC.	PAGE.
On unrendered lands, assessment and collection of (Chap. XVI)	---	312
Commissioners may contract for collection of.....	468	350
BALL PARKS—		
Occupation taxes on.....	66	81
BANKER—		
Assessment of personal property by.....	277	219
BANKS—		
Assessment of personal property by.....	277	219
Assessment of real estate by.....	278	222
BANKRUPT STOCKS—		
Occupation tax to be paid on.....	36	73
BENEFICIARIES—		
Not to receive property until tax paid.....	251	201
BILLIARD AND POOL TABLE—		
Occupation tax on.....	43	75
BONDS—		
Loan broker shall give.....	78	87
Of loan broker to be recorded.....	79	88
Of loan broker required for each place.....	80	88
Unpaid judgment on, etc., of loan broker.....	84	89
Judgments to be collected out of loan brokers'.....	85	89
Of State Tax Commissioner.....	147	130
Requisites of, of liquor dealers.....	191	151
Liquor dealers must give bond before license shall issue....	214	182
Form of, for liquor sales in local option territory.....	214	182
And oath of tax assessors.....	291	232
Purview of, of tax assessor.....	292	233
New, shall be given by assessor, when.....	293	233
Assessor shall give for county taxes.....	294	233
Tax collector shall give new, when.....	366	273
Tax collector shall give separate bond for county taxes....	367	274
Of tax collector to be approved before duties begin.....	368	275
Tax collector may require bond of deputies.....	369	275
For improvement districts, seawalls, etc. (Chap. XXI).....	.....	396
BOND TAXES—		
Levy of, by commissioners' courts.....	519	382
Must be levied until bonds are paid.....	520	383
Power of school trustees to levy, etc.....	521	383
Election for, by trustees, to be ordered, how.....	522	385
Public notice of election for, to be given.....	523	385
Who may vote for.....	524	385
Power and duties of assessor and collector of.....	525	386
Assessment and collection of, by county officers.....	526	386
Second election may be held to reduce, etc.....	529	388

BOOKS—	SEC.	PAGE.
Collector to keep for certain purposes.....	91	95
Licenses may be transferred on.....	96	97
For gross receipts to be examined by Revenue Agent.....	125	115
 BOARD—		
To calculate tax rate.....	29	66
State Tax, creation of.....	146	129
Secretary of State tax, may be employed.....	148	130
Of equalization, duties of.....	320	247
Commissioners' court to sit as.....	320	247
Of equalization, powers of.....	327	255
Of equalization, oath of members of.....	330	257
Of equalization, assessor to furnish lists to.....	333	259
 BOARD OF EQUALIZATION—		
Duties of, generally	320	247
Commissioners' court to sit as, when.....	320	247
Powers of, generally.....	327	255
Oath of members of.....	330	257
Assessors to furnish lists to, etc.....	333	259
Comptroller to furnish with lists of unrendered lands.....	426	312
Duty to value list of unrendered lands.....	427	313
Shall cause three rolls to be made of unrendered lands.....	428	313
 BOARD OF INQUIRY—		
Commissioners to sit as a, when.....	413	305
 BROKERS—(See <i>Cotton Brokers.</i>)		
Or commission merchants, tax on.....	74	82
Loan, definition of.....	77	87
Loan, shall give bond.....	78	87
Loan, shall keep record of loans made.....	81	88
Loan, shall file power of attorney.....	83	88
Assessment of personal property by.....	277	219
 BULK ASSESSMENTS—		
Validated, when.....	469	351
 BUFFALO AND CATALO—		
Exempt from taxation.....	950	562
 CALCULATION—		
State board to arrive at tax by (Chap. VII).....	.....	129
Duty of county judge to arrive at, by.....	250	201
 CANCELLATION—		
For forfeiture of charters of corporations.....	139	125
Of taxes, method where mistake in rendering.....	407	297
 CANNON CRACKERS—		
Dealers in, tax on.....	76	87

	SEC.	PAGE.
CAPITAL—		
Of unincorporated companies, how ascertained.....	160	137
CEMETERY LOTS—		
Exempt from taxation.....	948	561
CERTIFICATE—(See <i>Certificate of Redemption.</i>)		
CERTIFICATE OF REDEMPTION—		
To be issued by collector, when.....	408	298
CERTIFICATE OF EXEMPTION—		
In cities of 10,000 or over, requisites of.....	505	373
Form of	505	373
Of minor becoming of age, etc.....	506	374
CESTUI QUE TRUST—		
Rendition of property by.....	265	313
CHARTERS—		
Of corporations, how amended.....	23	45
CIGARETTES—		
Dealers in, occupation tax on.....	75	83
CIRCUSES—		
Occupation tax on, definition of.....	49	77
CITIES—		
May restrain illegal sales of liquors.....	241	196
May prevent sale of liquors in certain places.....	242	196
Levy and collection of school taxes for (Chap. XX).....	.....	389
Council shall submit maintenance tax for schools to voters of	530	389
Two-thirds majority of voters necessary for tax, etc.....	531	389
Power of council of, to order election for city school tax.....	532	389
Duty of council to levy school tax, when.....	533	390
Manner of levying school taxes by.....	534	390
School trustees of may determine tax rate for schools.....	535	391
Manner of assessing and collecting school taxes by.....	536	391
School tax funds collected to be turned over to school treasurer	537	392
Extension of city limits by, for school purposes.....	538	392
Law providing for depositories (Chap. XXVI).....	.....	474
May provide for exemptions from taxation.....	951	563
May levy additional school taxes (Chap. XXXIII).....	.....	603
May levy taxes for park purposes.....	2	606
CITIES AND COUNTIES—		
Shall not have certain powers.....	21	41
Depositories for funds of (Chap. XXVI).....	.....	474

CITIES AND TOWNS—(See <i>Municipal Taxes</i> .)	SEC.	PAGE.
To be chartered, how.....	22	42
Home rule amendment for.....	23	44
Assessment and collection of taxes in.....	24	55
May close drinking houses, when.....	243	196
Delinquent tax laws available for.....	454	337
Proceedings by, against delinquent taxpayers.....	460	345
Levy and collection of school taxes by (Chap. XX).....	530-538	389
Depositories for funds of (Chap. XXVI).....	.....	474
Additional school taxes may be levied by.....	.....	603
Power of city council to provide for collection of taxes....	920	548
Power of city council to regulate tax lists, assessment of taxes, etc.	921	550
Duty of taxpayers to render inventory of property, etc....	922	550
Assessor and collector, powers, duties, bond, etc.....	923	551
Duty of assessor and collector to make lists of personal property, etc.	924	552
Unrendered property shall be ascertained, etc., by as- sessor	925	553
Assessment for back taxes in.....	926	553
Appointment and duties of board of equalization in.....	927	553
Annual meetings of board in.....	928	553
Board of equalization in, shall value property.....	929	554
Value of all property to be equalized by board.....	930	554
Unrendered property list in, to be examined by board.....	931	554
Board shall give written notice to property owners.....	932	554
Duty of board to lower values, when.....	933	555
Approval of lists and rolls by board of equalization.....	934	555
Action of board of equalization of, final.....	935	555
Compensation of board of equalization in.....	936	556
Oath to be taken by members of city or town board.....	937	556
Duty of assessor and collector in regard to collection of taxes	938	556
Property of taxpayer shall be levied on and sold for taxes when	939	556
Assessor and collector shall make deed to purchaser to property sold for taxes.....	940	557
Effect of deed, right of redemption, etc.....	940	557
Sale may take place at another time than that first ad- vertised, when	941	558
May be continued from day to day.....	941	558
Property shall be struck off to, when.....	942	558
Certain provisions of general tax law applicable except, etc.	943	559
Property of infant, etc., may be rendered, when.....	944	559
Redemption of lands sold for taxes by cities or towns.....	945	559
City taxes, etc., collectible in current money only.....	946	560

CITY DEPOSITORIES—

Council to take bids for, when and how.....	764	490
Bids to state what; not to be opened until.....	764	490
Opening of bids; award, how made; bond required.....	765	491
Order designating; transfer of funds; penalty.....	766	491

CITY DEPOSITORIES—(Cont'd.)	SEC.	PAGE.
Penalty for failure to give bond; new bids, etc.....	766	491
City warrants, how paid, etc., and charged.....	767	492
Checks payable where; bonds, etc., payment of.....	767	492
If no city depository selected, etc., may select at subsequent meeting, etc., period.....	768	493
New bond; penalty if not given.....	768	493
Treasurer not responsible, except.....	768	493
Restrictions upon drawing, etc., of checks and payment of checks; treasurer's report.....	769	493
Application of provisions of this chapter; definition of terms	770	494
 CITY TAXES—		
Railway property subject to.....	5	18
For school purposes (Chap. XX).....	530-538	389
 C. O. D. SHIPMENTS—		
Amount of occupation tax on handling liquors.....	222	190
No person or company required to maintain office for.....	224	191
Invalidity of law regulating (See note to sec.).....	225	191
 COLD STORAGE—		
Tax on person operating in dry territory.....	218	187
Amount of tax for keeping.....	219	188
 COLLECTION OF TAXES—		
In counties, cities and towns.....	24	55
On unrendered lands (Chap. XVI).....		312
Commissioners' court may contract for, when.....	468	350
Fees of office for (Chap. XXVII).....		497
 COLLECTOR OF TAXES—		
To keep books for certain purposes.....	91	95
Duty of, to sue for inheritance taxes, when.....	254	202
To pay inheritance taxes to State Treasurer.....	255	202
Shall give new bond, when.....	366	273
To give separate bond for county taxes.....	367	274
Shall not begin collections until bond is made.....	368	275
May appoint deputies, etc.....	369	275
Shall receipt for assessment rolls.....	370	275
Shall be collector of all taxes.....	371	275
When shall begin collections.....	372	276
Shall keep office at county seat.....	373	277
Shall issue tax receipts showing what.....	374	278
Receipts of, shall be recorded.....	375	278
Quarterly reports to be made by.....	379	279
Shall report monthly, when.....	380	281
Report of, not to be approved unless, etc.....	381	282
To make up lists of insolvents and delinquents.....	382	283
Duty to endeavor to collect delinquent list.....	383	283
Shall begin forced collections, when.....	385	284

COLLECTOR OF TAXES—(Cont'd.)	SEC	PAGE.
Personal property shall be pointed out to.....	386	286
Duty of, when property about to be removed from county..	387	286
Duty of, to levy on property in other counties.....	389	287
Shall not be allowed credit for delinquents, until.....	390	288
Shall give notice of time and place of sales.....	392	289
Duty of, when property is insufficient.....	393	289
Shall seize real estate when personalty exhausted.....	394	289
Shall advertise real property before sale.....	395	289
Shall post lists of lands before sale.....	396	290
May continue sales from day to day.....	397	290
How lands shall be sold by.....	399	292
Deed of, to lands sold, and its requisites.....	400	292
Sales by to be reported to commissioners' court.....	401	295
Redemption of lands sold by.....	402	295
Receipt of, for taxes, notice, when.....	406	297
Sworn statements to be presented to, when.....	407	297
Shall issue certificate of redemption, when.....	408	298
Shall bid in lands for State, when.....	409	298
Owners may redeem lands sold by depositing money with..	410	304
Redemption by payment to.....	412	305
Duty of, to file complaint, when.....	414	306
Compensation and commissions of.....	415	306
Compensation of, on occupation taxes.....	416	306
Shall be paid for one levy only.....	417	306
Duty of, to account for all moneys, when.....	418	307
Shall account for payment of moneys.....	419	307
How collections by, shall be accounted for.....	420	307
Notifications to, how made.....	421	308
To give notice and advertise unrendered lands.....	429	313
To enforce collections on unrendered lands.....	430	313
Duty of, to sell unrendered lands for taxes due thereon....	432	314
How shall advertise unrendered lands for sale.....	433	314
How shall sell unrendered lands for taxes due thereon.....	434	315
May continue sales of unrendered lands for taxes due thereon	435	315
Deed of, to purchasers of unrendered lands for taxes due thereon	436	315
When shall execute deed to unrendered lands sold for taxes	437	316
Effect of deed made by, to unrendered lands sold for taxes	438	316
Shall make report of sales of unrendered lands sold for taxes	439	316
Shall pay owner proceeds of unrendered lands sold for taxes, to whom.....	440	316
Shall apply collections from unrendered lands, how.....	441	316
Shall deduct costs from proceeds of sale of unrendered lands	442	317
Fees of office of (Chap. XXVII).....	.....	497
Fees of and how paid.....	812	515

	SEC.	PAGE.
COMMERCIAL AGENCIES—		
To report quarterly.....	104	102
COMMISSIONERS—		
State tax, appointment of.....	146	129
State tax, to execute bond.....	147	130
COMMISSIONS—		
And compensation of collectors.....	415	306
Of collector on occupation taxes.....	416	306
Allowed on one levy only.....	417	306
COMMISSIONERS' COURT—		
Duty of, to calculate county tax rate.....	33	68
Power to levy taxes for county purposes.....	89	91
May levy license tax in addition to other.....	207	180
To furnish record for recording tax receipts.....	378	279
County clerk and collector shall report to, monthly.....	380	281
Shall cause lands delinquent to be listed by collector.....	446	321
Empowered to reduce assessments, when.....	467	349
May contract for collection of back taxes, when.....	468	350
Duty of when lists of unrendered lands made up.....	474	353
Pay of members of.....	806	510
COMPENSATION—(See <i>Commissions</i>.)		
COMPLAINT—		
Collector shall file, when.....	414	306
COMPTROLLER—		
To assess and collect taxes in unorganized counties.....	12	31
Tax assessor shall certify to.....	30	66
Duty of, to certify tax rate.....	32	68
To furnish certain books to tax collector.....	92	96
To furnish occupation tax receipts to collectors.....	94	96
May require additional reports on gross receipts.....	124	115
May revoke license of liquor dealers, when.....	175	151
Application to, for permit to secure license of liquor dealer	174	147
To be notified of forfeiture of liquor licenses.....	173	146
Shall institute proceedings to revoke liquor license, how....	176	152
Duty of, on receipt of depositions in liquor cases.....	181	154
Right of appeal from action of, in revoking liquor license..	182	155
Number of permits or liquor licenses to be issued by.....	184	156
Clerk to certify list of forfeitures of license to.....	194	175
Duty of, to contract for collection of inheritance taxes.....	248	199
To assess property in unorganized counties.....	317-345	242
To instruct tax assessors.....	324	253
To allow commissions to assessors.....	341	262
Shall assess lands of non-residents, when.....	344	263
Duties of, as to lands in unorganized counties.....	346	264
When shall receive assessments.....	347	264

COMPTROLLER—(Cont'd.)

	SEC.	PAGE.
Duty of, on receipt of tax rolls.....	348	264
Owners must pay as to his assessments.....	349	265
May appeal from his assessments.....	350	265
May levy upon and sell property, when.....	351	265
Sale of lands by.....	352	266
Shall bid in lands for State, when.....	353	266
Redemption of lands sold by.....	354	267
Tax deed made by.....	355	267
List of purchasers to be kept by.....	356	267
Deed of, shall vest good title.....	357	267
Shall keep taxes until when.....	359	267
Duty of, as to tax money.....	360	268
Special deposit to be made by, when.....	361	268
Duty to prepare lists of unrendered lands.....	425	312
To send lists of unrendered lands to boards, etc.....	426	312
To make out lists of unrendered lands sold to State.....	431	313
Unsold unrendered lands to be reported to, when.....	443	317
Property listed by, when.....	471	352

CONCERTS—

Where fee charged, tax.....	54	78
-----------------------------	----	----

CONFEDERATE SOLDIERS—

Legislature may levy tax for.....	20	40
-----------------------------------	----	----

CONSTITUTIONAL PROVISIONS—

Relating to equality and uniformity of taxes.....	1	1
Relating to occupation taxes.....	2	11
Relating to exemptions from occupation taxes.....	2	11
Levy of taxes by law for public purposes.....	3	17
Power to tax corporations.....	4	18
Railroad property subject to city taxes.....	5	18
Method of making appropriations.....	6	18
Appropriations not to be diverted.....	7	20
Method of assessing railroad property and where.....	8	20
Limitation on rate of taxation.....	9	20
Taxes not to be released except when.....	10	29
To be assessed in county except when.....	11	29
Property in unorganized counties.....	12	31
Redemption from tax sales by owners.....	13	32
For election of assessors.....	14	34
Creating lien for taxes.....	15	35
Sheriff to be collector, when.....	16	37
Legislature to tax other objects.....	17	37
Limitation on power of Legislature to tax.....	19	38
Tax for Confederate soldiers.....	20	40
Legislature not to grant certain powers to cities and counties.....	21	41
Cities and towns, how chartered.....	22	42
Home rule amendment for cities of five thousand and over.....	23.	44

CONSTITUTIONAL PROVISIONS—(Cont'd.)	SEC.	PAGE.
Assessment and collection of taxes in counties, cities and towns	24	55
Providing for seawall taxes; eminent domain granted.....	25	57
Legislative donations for seawalls.....	26	62
Certain property to be exempt.....	27	62
Special tax for school purposes.....	28	63
Of Section 3 and Section 3a, Art. 7, omitted.....	.....	2
Automatic tax law valid (note).....	29	66
Relating to poll taxes and qualifications of voters.....	493	365
 CONTRACT—		
Duty of Comptroller relating to inheritance tax.....	248	199
Commissioners' court may make, for collection of back taxes	468	350
 CORPORATE PROPERTY—(See <i>Corporations</i> .)		
Assessment of property.....	282	225
 CORPORATIONS—		
Duty of Attorney General to sue for franchise taxes.....	143	127
Constitutional power to tax.....	4	18
Domestic, franchise taxes to be paid by.....	126	117
Foreign, franchise taxes to be paid by.....	127	118
Officers of, to make affidavits.....	129	119
Increase in capital stock of.....	136	122
Charter of, forfeited for failure to pay tax.....	137	122
May surrender permit when.....	139	125
Penalty for, continuing business after forfeiture.....	141	126
Intangible assets of certain, to be taxed.....	153	132
Certain reports and statements to be made by (Chap. VII) .....	.....	129
Rendition of property by.....	265	212
Assessment of property of.....	282	225
 COTTON BROKERS—		
Tax to be paid by each.....	57	79
 COUNTY ATTORNEY—		
Duty to sue for taxes on personal property.....	422	308
Fees that may be retained by.....	775	499
Compensation in certain counties.....	778	501
 COUNTIES—		
Taxes to be assessed in, except when.....	11	29
Tax rate for, to be calculated.....	33	68
Power of commissioners to levy taxes for purposes.....	89	91
To be visited by members of tax board.....	150	131
Property to be rendered in only one.....	267	213
Duty of collector when property about to be removed from	387	286
Execution on property in other.....	389	287
Lands to be platted and numbered in certain.....	461	346
Officers of and duties relating to finances (Chap. XXVIII); .....	.....	823

COUNTY CLERK—

	SEC.	PAGE.
Duty of, to report licenses to Revenue Agent.....	212	182
To report non-intoxicating malt licenses issued.....	217	187
To report all cold storage licenses, etc.....	221	190
Shall report to commissioners monthly, etc.....	380	281

COUNTY DEPOSITORIES—

Commissioners' courts to call for bids, when and how.....	749	483
Sealed bids to be placed in hands of county judge; regulations of	750	483
Bids to be opened when; interest, how computed, etc.....	751	484
Selected to execute bond to secure funds.....	752	484
Commissioners' court may demand additional bonds, when	753	485
Proceedings on approval of bond; duties of the county treasurer	754	486
Failure of bidders for county depositories; power and duty of court	755	487
If two or more, clearing house to be selected.....	756	488
County treasurer's checks payable at county seat, etc., penalty	757	488
If, not located at county seat, requirements.....	758	488
County warrants, how paid, etc., and charged; statement; bonds, etc.	759	489
If no, selected, etc., may select at subsequent term, etc.; period	760	489
New bond may be required of, penalty, if not given.....	761	489
County treasurer not responsible for negligence of, but, etc.	762	490
Bids from adjoining county, when; requirements.....	763	490

COUNTY FINANCES—

Duty of commissioners' court to procure ledger, etc.....	823	522
Duty of county clerk to keep accounts.....	824	522
Duty of county clerk to balance each account.....	825	522
Duty of county clerk to publish report.....	826	523
Compensation of clerk for keeping ledger.....	827	523
Accounts shall be opened how, and shall be indexed.....	828	523
Account shall be kept with the tax collector.....	829	523
Receipt of collector for tax rolls	830	523
How the collector may discharge his indebtedness.....	831	524
Collector shall make separate lists of indigent and delinquent taxpayers, etc.	832	524
No credit shall be entered for delinquent taxes until allowed by the court.....	833	524
Taxes for each year shall be kept separate.....	834	524
Tax collector going out of office shall give tax rolls to successor	835	524
Tax collector shall collect occupation tax, and receipt for same	836	524
County clerk shall issue occupation license, when.....	837	525
County clerk shall make two reports of licenses issued at end of each month.....	838	525

COUNTY FINANCES—(Cont'd.)	SEC.	PAGE.
What the reports of county clerk shall state, etc.....	839	525
County clerk shall keep occupation tax account with collector	840	525
County clerk shall keep account with sheriff.....	841	525
How sheriff may free himself from liability under preceding article	842	525
Duty of clerks to report fines, judgments and jury fees monthly	843	526
What the reports of county officers shall show.....	844	526
Fines imposed and judgments rendered by justices shall be charged against them, etc.....	845	526
Duty of the district attorney to make report, etc.....	846	526
Duty of the county attorney to make report.....	847	527
Judgment not collectible may be sold.....	848	527
Any officer collecting money for the county shall report same	849	527
Money collected by officer shall be charged to him, etc.....	850	528
Estray account shall be kept in ledger.....	851	528
Duty of county clerk when receipt of Estray money is presented	852	528
Clerk shall keep account with county treasurer.....	853	528
County treasurer shall register claims against the county..	854	528
How claims against the county shall be classified.....	855	529
Manner of registering claims against the county.....	856	529
What shall be written on registered claim.....	857	529
Claims shall be numbered, in what order.....	858	529
Order in which claims shall be paid.....	859	529
Classification of county funds received by county treasurer	860	530
Commissioners' court may create other classes of funds, etc.	861	530
Said court may transfer one class of funds to another, except	862	530
County treasurer shall report registered claims each month	863	530
Clerk shall enter report upon ledger, etc.....	864	530
Party receiving payment of claim shall receipt thereon...	865	531
Officer receiving claim in payment of debt to county shall report list of same.....	866	531
Claims received by other officer than county treasurer shall be reported to county treasurer.....	867	531
Duty of the county treasurer to keep accounts, etc.....	868	531
Claim shall be canceled, when and how.....	869	531
Report of treasurer, order approving; to recite what; credit	870	531
Commissioners to inspect and count cash, etc., in hands of treasurer, etc.....	871	532
Affidavit of compliance, etc.; filing, record and publication of, etc.....	872	532
Commissioners' court shall examine and correct all accounts and reports, etc.....	873	532

INDEX.

628

COUNTY FINANCES—(Cont'd.)	SEC.	PAGE.
Reports and vouchers shall be filed and preserved in county clerk's office.....	874	532
District judge shall appoint committee to examine into the finances of county.....	875	532
Duty of such committee in conducting examination.....	876	533
Report of committee, and what it shall set forth.....	877	533
Compensation of committeemen appointed by district judge	878	533
All reports made by county officers shall be sworn to.....	879	533
When and where monthly reports shall be filed.....	880	533
 COUNTY SEAT—		
Tax collector shall keep office at.....	373	277
 COUNTY TAXES—		
Separate bond by collector for.....	367	274
 COUNTY TREASURER—		
Commissions of	809	513
Commissions of, on school funds, etc.....	810	514
Shall keep accounts.....	868	531
 COUNTY JUDGE—		
Duty to calculate inheritance taxes.....	250	201
Ex-officio fees as county superintendent.....	780	501
 CREDITS—		
Definition of the term.....	263	210
And stocks not to be listed, when.....	275	219
 CREDIT ASSOCIATIONS—		
Or reporting agencies, tax to be paid by.....	64	80
 CURRENT MONEY—		
Taxes collectible only in.....	22	42
All taxes payable in United States, exceptions.....	90	95
Taxable	287	230
To be assessed how.....	288	230
 DEED—		
Of tax collector and its requisites.....	400	292
Of tax collection to unrendered lands, how executed.....	436	315
When collector shall execute, to unrendered lands.....	437	316
Effect of tax collector's, to unrendered lands.....	438	316
 DEFINITION—		
Of circuses	49	77
Of cigarettes	75	83
Of cannon crackers.....	76	87
Of loan brokers.....	77	87
Of wholesale oil dealers.....	110	107
Of wholesale liquor dealers.....	112	109

DEFINITION—(Cont'd.)	SEC.	PAGE.
Of duties of State Tax Board.....	149	130
Of intoxicating liquor.....	204	178
Of retail liquor dealer.....	167	144
Of retail malt dealer.....	168	144
Of "person"	263	210
Of real property for purposes of taxation.....	261	206
Of personal property for purposes of taxation.....	262	207
Of "credits"	263	210
Of "tract" or "lot".....	263	210
Of "singular" and "plural".....	263	210
Of "oath"	263	210
Of "town" or "district".....	263	210
Of "value"	263	210
Of "real property," for purposes of taxation.....	444	319
Of concentrated feed stuffs.....	718	469
Of term "importer" of feed stuffs.....	723	472
Of "physician and surgeon".....	897	542
Of "residence"	952	562
Of "money and notes".....	1011	589
Of "officer of the government".....	974	575
DELINQUENTS—(See <i>Delinquent Taxes</i>.)		
List to be made out by tax collector.....	382	283
Duty of collector to endeavor to collect from.....	383	283
Forced collections from to begin, when.....	385	284
Collector not allowed credit for, when.....	390	288
Duty of tax collector to notify all.....	488	357
DELINQUENT TAXES—		
Sales of lands, for how made.....	399	292
Chapter relating to (Chap. XVII).....	444-492	318
To remain a lien on lands.....	445	319
Lands on which due, to be listed by tax collector.....	446	321
Lists of, to be recorded by county clerk.....	447	323
Lists of, to be published in what manner.....	448	323
Suits to foreclose liens for.....	449	324
Proceedings in suits for collection of.....	450	326
Sheriff to execute deeds to lands sold for.....	451	331
Attorneys to represent State in suits to collect.....	452	333
Assessor to list lands on which due annually.....	453	335
Law relating to, available to cities and towns.....	454	337
Law relating to, lands exempt from.....	455	338
Owner may redeem from sales for, by paying double.....	457	339
Owners may be redeem from State when sold for, how.....	458	340
Proceedings against those who owe.....	459	341
Proceedings under law available to cities and towns.....	460	345
Lands on which due to be platted and numbered.....	461	346
Evidence of title to redeem lands sold for.....	462	347
Property omitted on which due, lists may be made.....	463	348
Property omitted to be assessed for, how.....	464	348
Commissioners' court may contract for collection of.....	468	350

DELINQUENT TAXES—(Cont'd.)	SEC.	PAGE.
In suits to collect, bulk assessments validated.....	469	351
Record of, to be published, how.....	470	351
Unassessed property to be assessed for, how.....	471	352
Lands not rendered, to be assessed for, how.....	473	352
Duty of tax collector to notify all persons owing.....	488	357
How notices of, shall be made out by collector.....	489	358
Attorneys shall file suits for, when.....	490	359
Duties relating to collection of, mandatory.....	491	360
Certain laws relating to, repealed.....	492	360
Interest on (See <i>Notes and Annotations to</i>).....	492	360
 DELINQUENT TAX RECORDS—		
To be made up by collector, how.....	446	321
To be recorded by county clerks.....	447	323
To be published, how and when.....	448	323
To be published, how.....	470	351
 DEMISE—		
Tax lien superior to, when.....	388	286
 DEPOSITORIES—		
State, county and city (Chap. XXVI).....		474
 DEPUTY—		
May be appointed by assessor, when.....	295	233
Authority of, of assessor's.....	296	233
Tax collector may appoint, when.....	369	275
To collect poll taxes, may be appointed, when.....	509	375
 DINING CARS—		
Sleeping and, gross receipt taxes.....	108	105
 DISTRICT ATTORNEY—(See <i>County Attorney</i> .)		
Duty to sue for taxes on personal property.....	422	308
 DISTRICT CLERK—		
Duty of, relating to corporation charters.....	144	127
 DISTRICT COURT—		
Right of appeal of liquor dealer to.....	182	155
 DIVERSION—		
Of appropriation, prohibited.....	7	20
 DOMESTIC CORPORATIONS—(See <i>Corporations</i> .)		
 DONATIONS—		
For construction of seawalls.....	26	62
 DOUBLE PAYMENT—		
Commissions to inquire into and cancel, when.....	413	305
Owner may redeem in two years by making, etc.....	457	339

DRAINAGE DISTRICTS—	SEC.	PAGE.
Assessment and collection of taxes; report, accounting and disbursement, etc.	650	440
Liens, remedies, etc., for collecting assessments the same as other taxes.....	651	440
Taxes collected to be known as drainage fund.....	652	440
Construction in, to be let to lowest responsible bidder, when	653	440
Tax for interest, sinking fund and expenses in.....	681	450
Refundment to construction and maintenance fund.....	681	450
Investment of sinking fund.....	681	450
Powers of assessor and collector; equalization; lien, etc....	681	450
Additional tax books.....	682	451
Assessment on property in drainage district.....	682	451
Penalty; forfeiture	682	451
Collector charged with assessment rolls in; compensation; Bond required; penalty for failure to give.....	683	452
Duty of collector to report delinquents to commissioners' court; duty of court.....	684	452
Separate tax assessor and board of equalization in.....	685	452
Election; appointments; powers and duties of assessors....	685	452
Levy of annual tax for maintenance of improvements; limitations of amount.....	686	453
Compensation of trustee; of county assessor and collector; provisions for	687	453
 DRINKING HOUSES—		
May be closed by cities when, etc.....	243	196
 DUPLICATES—		
Of poll tax receipts to be kept by collector.....	514	377
 DUTIES—		
Of State Tax Board defined.....	149	130
Of county officers relating to finances (Chap. XXVIII).....	.....	522
 ELECTRIC LIGHT COMPANIES—		
Occupation tax to be paid by.....	61	80
 EMBALMERS—		
License fee of.....	902	544
Application to engage in business; skill required.....	902	544
Renewal of license; fee for.....	903	544
License to be revoked, when, how.....	904	545
Department to be self-sustaining.....	905	545
Moneys received, how appropriated.....	905	545
Unlawful to practice without license.....	906	545
Provisions do not apply to what.....	907	545
 EMINENT DOMAIN—		
Granted to cities on Gulf.....	25	57

EQUALITY AND UNIFORMITY—	SEC.	PAGE
All taxes to be equal and uniform.....	1	1
Duty of Legislature to equalize taxes.....	18	37
EVIDENCE—		
Of license to sell liquor in dry territory.....	209	181
General reputation admissible as, when.....	234	194
Of title to redeem lands what constitutes.....	462	347
EXECUTION—		
On property for taxes in other counties.....	389	287
EXECUTORS—		
Property bequeathed to, subject to inheritance taxes.....	246	199
EXEMPTIONS—		
Constitutional provisions relating to.....	1	1
Certain, on occupation taxes.....	2	11
Of certain property from taxation.....	27	62
Charitable performances, from tax.....	48	77
Charitable wax-works exhibition, from tax.....	53	78
Of gross receipts taxpayers from franchise tax.....	142	126
Of producers of domestic wines from taxation.....	213	182
Of certain lands from provisions of delinquent tax laws....	456	338
Certificates of, in cities of 10,000 and over, etc.....	505	373
Certificates of, of minors reaching age, etc.....	506	374
Farm products from taxation, when.....	947	561
Cemetery lots, from forced sale.....	948	561
Y. M. C. A. and Y. W. C. A. buildings and equipments, from taxation	949	561-562
Buffalo and catalo exempt from taxation.....	950	562
City council may provide for exemption of property from taxation, etc.....	951	562
"Residence" defined—May secure poll tax exemption, when, etc.	952	562
Who exempt from payment of poll tax; when paid; receipt	953	563
Poll tax, who not required to pay.....	954	563
Homestead exemption does not apply, when.....	955	564
Water-Users' Association incorporated under United States Reclamation Act	956	564
United States lands, from taxation.....	957	565
Persons from serving as overseers, when.....	958	567
Who liable and who exempt from road duty.....	959	567
From taxation	960	567
Cemeteries and grounds used for burial of dead.....	961	568
All property belonging to the State.....	962	568
All buildings belonging to counties.....	963	570
Poor farms and poor houses belonging to public.....	964	570
Property of insititutions of purely public charity.....	965	570
Fire engines and apparatus.....	966	571
Market houses, public squares, etc.....	967	571

EXEMPTIONS—(Cont'd.)	SEC.	PAGE.
Public libraries and property of same.....	968	571
Furniture not exceeding \$250.00 in value.....	969	571
Annual pensions granted by State or United States.....	970	571
 EXHIBITIONS—		
Acrobatic, occupation tax on.....	51	78
Sleight of hand, occupation tax on.....	52	78
Wax-works, etc, tax on.....	53	78
Phonographic, tax on.....	70	82
Stereoscopic, tax on.....	72	82
 EXPRESS COMPANIES—		
To file annual reports of gross receipts.....	101	100
 FACTORS—		
And commission merchants, tax on.....	57	79
 FALSE SWEARING—		
In securing poll tax receipt to be reported, etc.....	511	376
To be reported to grand jury, when.....	512	376
 FEE BILL—		
Regulating fees of officers.....	775	499
Applies to all counties in the State (see note).....	.....	520
 FEES—(See <i>Fees of Office.</i>)		
For taking testimony of witnesses in liquor license cases.....	183	156
To which tax assessor entitled in certain instances.....	476	353
 FEES OF OFFICE—		
Taxed against corporations by Secretary of State.....	771	497
Minimum in certain cases.....	772	498
Pending suit not affected by.....	773	499
Paid in advance to Secretary and by him to Treasury.....	774	499
Maximum amount allowed to be retained by certain officers	775	499
Maximum in certain counties.....	776	500
Maximum in counties containing city of twenty-five thousand and inhabitants, etc.....	777	500
County attorney, compensation in certain counties.....	778	501
District attorney, compensation of.....	779	501
County judge, compensation as superintendent of public instruction	780	501
Last United States census to govern in all cases.....	781	501
Amounts allowed to be retained out of, collected; State not responsible	782	501
Disposition of, excess fees, etc.....	783	502
Officer not collecting maximum, may retain out of delinquent fees collected, remainder paid to treasurer.....	784	502
District clerks in counties having more than one district....	785	503

FEES OF OFFICE—(Cont'd.)	SEC.	PAGE.
Delinquent fees, collection of, commissions on, remainder paid to treasurer.....	786	503
Compensation for ex officio services, when may be allowed; proviso	787	503
Officials to keep accounts.....	788	504
Duty of grand jury and district judge as to.....	788	504
Officers to make sworn statement, etc., to show what.....	789	504
Fiscal year defined, and regulation of reports.....	790	505
Officers to make monthly report, statement of expenses; audit, etc.	791	505
Certain officers not required to report or keep statements; proviso as to district attorney.....	792	506
Collector and assessor to file with Comptroller copies of sworn statements	793	506
Officer recovering money or fees belonging to another, shall inform him and pay over on demand, etc.....	794	506
Officers to report, etc., requisites of report.....	795	506
Officers to pay over to Treasurer after four years, etc., statements; disposition	796	506
Officers may appoint deputies, how.....	797	507
County judge not to influence appointment, etc., compensation, how paid.....	797	507
Duty of district and county attorneys to give opinion, etc., to officers	798	509
Duty of district and county attorneys to give opinion, etc., to county and precinct officers.....	799	509
State's attorneys with the consent of Attorney General to buy property.....	800	509
State's attorneys may sell property bought for State, with consent of Attorney General.....	801	509
Attorneys representing county may sell property of county	802	510
Duty of county attorney to give receipt for money collected	803	510
Duty of State Comptroller to prescribe forms.....	804	510
State Comptroller shall keep ledger for accounting of tax collectors	805	510
Per diem pay of county commissioners.....	806	510
Assessor's compensation	807	511
Collector's compensation	808	512
County treasurer's commission.....	809	513
County treasurer's commission on school funds.....	810	514
Commissions shall not exceed \$2,000 annually.....	811	514
Collector's fees and how paid.....	812	515
Compensation of special school taxes for assessment and collection	813	516
List of voters furnished, to be used in primary, etc.....	814	517
Duty of collector to furnish lists.....	815	517
What officers entitled to receive copies of laws.....	816	518
How printed laws shall be distributed.....	817	518
Certain allowance to tax collector.....	818	518
Certain manufacturers required to pay registry fees to to Pure Food Department.....	819	518

FEEs OF OFFICE—(Cont'd.)		Sec.	PAGE
Data to be furnished Commissioner of Agriculture by tax assessor	820	519	
Comptroller required to keep revenue ledger.....	821	520	
That may be charged by Pharmacy Board.....	822	520	
FEED STUFFS—			
To be marked, how.....	716	468	
What not included in definition of.....	717	469	
Statutory definition of.....	718	469	
Sample of, to be deposited at A. & M. College.....	719	469	
Each package of, to have tag attached.....	720	470	
Manufacturers required to furnish list of, etc.....	721	471	
Duty of A. & M. directors to secure samples.....	722	471	
Definition of term "importer" of.....	723	472	
What shall be deemed adulterated.....	724	472	
Duties and powers of directors relating to, etc.....	725	472	
Disposition of funds derived from.....	726	472	
Funds from, to be used how, etc.....	727	473	
FINES—			
Not considered in fixing tax rate (note).....		71	
FINAL ACCOUNT—			
Not to be allowed, when.....	259	203	
FINANCES—(See County Finances.)			
How handled by various county officers (Chap. XXVIII)....		523	
FIRE AND MARINE INSURANCE COMPANIES—			
Gross receipt taxes to be paid by.....	109	105	
FIRE ENGINES AND APPARATUS—			
Exempt from taxation.....	966	571	
FOREIGN CORPORATIONS—(See Corporations.)			
FORFEITURES—			
Of charters of corporation for failure to pay tax.....	137	123	
Of charters of corporations by judgment.....	139	125	
Of charters, duty of district clerk.....	144	127	
How cancelled after being made.....	139	125	
Of liquor license by county judge.....	173	146	
Power of Comptroller in regard to liquor licenses.....	175	151	
How proceedings for, as to liquor licenses, instituted.....	176	152	
Duty of Comptroller in regard to liquor licenses.....	181	154	
FRANCHISE TAXES—			
Amount to be paid by corporations (Chap. VI).....		117	
Amount to be paid by domestic corporations.....	126	117	
Amount to be paid by foreign corporations.....	127	118	
How computed on foreign corporations.....	127	118	

FRANCHISE TAXES—(Cont'd.)	SEC.	PAGE.
How amount is determined.....	130	120
Gross receipts taxpayers exempt from.....	142	126
Payment of, by corporations in liquidation.....	145	128
 FRAUD—		
Evasion by taxpayers a, on public revenue.....	301	235
 FRATERNAL BENEFIT SOCIETIES—		
Exempt from certain taxes.....	715	467
 FRONTIER—		
Protection of—Constitutional provision for.....	19	39
 FURNITURE—		
Exempt from taxation, when.....	969	571
 GAMING—		
Use of premises for, may be enjoined.....	237	195
 GAS MANUFACTURERS—		
Occupation tax on.....	60	80
Gross receipts tax to be paid by.....	103	102
 GENERAL LAW—		
Taxes shall be levied by, for public purposes.....	3	17
Cities and towns to be chartered by.....	22	42
 GRAND JURY—		
Judge to charge liquor law to.....	201	177
List of liquor licenses to be given to.....	200	177
Collector to report false swearing to, when.....	511-512	376
 GROSS RECEIPTS—		
Occupation taxes, based upon (Chap. V.).....		100
Express companies to file reports annually.....	101	100
Of telegraph companies, tax on.....	102	101
Of gas companies, tax on.....	103	102
Of interurban and electric railways.....	111	108
Of stock, refrigerator and other companies.....	105	103
Of pipe line companies, tax on.....	106	103
Of pipe line companies—Additional taxes.....	107	104
Of sleeping and dining car companies.....	108	105
Of fire and marine insurance companies.....	109	105
Of oil companies and dealers, tax on.....	110	107
Of wholesale liquor dealers.....	112	109
Of wholesale and retail dealers in pistols.....	113	110
Of text and law book publishers.....	114	111
Of oil well owners or lessees.....	116	112
Of terminal railway companies.....	117	113
Tax on, to be paid when business begins.....	118	113
Penalty for failure to make reports of.....	119	114

GROSS RECEIPTS—(Cont'd.)		SEC.	PAGE.
Penalty for failure to pay tax on.....	120	114	
Penalties for failure to pay may be recovered.....	121	114	
Taxes on, in addition to all others.....	123	114	
State Revenue Agent to examine books for.....	125	115	
Payers of, exempt from franchise taxes.....	142	126	
HIGHWAY COMMISSION—			
Law establishing, etc. (Chap. XXXIII).....	.....	590	
HOME RULE—			
Amendment to Constitution for cities and towns.....	23	44	
HOMESTEAD—			
Shall not be sold for taxes other than, etc.....	398	291	
Exemption of, does not apply, when.....	955	564	
HUNTING LICENSES—			
Fees for	908	545	
Required of non-residents; requisites and duration.....	908	545	
Hunting licenses required of residents, when.....	909	545	
Requisites; authority given, duration; fee.....	909	546	
County clerk to issue local hunting licenses, etc., keep stubs of, etc.....	910	546	
County clerk to keep record.....	911	546	
ICE—			
Wholesale dealers in, to pay tax.....	67	81	
IDIOT—			
Rendition of property by.....	265	212	
IMPROVEMENTS—			
And all lands, subject to taxation.....	444	319	
IMPROVEMENT DISTRICTS—			
Levees and seawalls, taxes relating to (Chap. XXI).....	.....	395	
Power of commissioners' court to establish.....	539	396	
May control levees, etc.....	540	396	
Requisites of petition to establish.....	541	396	
Objection to creation of, how made.....	542	397	
Duty of court on hearing petition for.....	543	398	
Court to appoint an engineer for, when.....	544	398	
Engineer to give bond.....	545	398	
Engineer to make certain estimates.....	546	398	
Report of engineer on.....	547	399	
Hearing on report of engineer.....	548	399	
Proceedings on report of engineer.....	549	399	
Court to order election for, form of ballot.....	550	400	
Notice of election for.....	551	400	
Oath to be taken by voters in elections for.....	552	401	
Returns of elections held for.....	553	401	

IMPROVEMENT DISTRICTS—(Cont'd.)	SEC.	PAGE.
Commissioners appointed, term of, compensation.....	554	402
Oath of commissioners of.....	555	402
Bond of commissioners of.....	556	403
Commission to organize.....	557	403
Appointment of engineer by commission.....	558	403
What maps and profiles of, shall show.....	559	403
Bonds to be issued, limitations upon.....	560	404
Form and terms of bonds.....	561	405
Bonds to be submitted to Attorney General.....	562	406
Bonds to be registered by Comptroller.....	563	406
Bonds of, to be kept in books, sinking fund.....	564	407
Bonds of, how to be sold.....	565	407
County judge to give bond before selling bonds.....	566	407
Expenses of, how paid.....	567	408
Deposit to accompany petition for.....	568	408
Tax to be levied.....	569	408
County assessor to assess property of.....	570	409
Tax collector to give special bond.....	571	409
Delinquent taxes of, collected how.....	572	410
County treasurer to keep account with.....	573	410
Taxes a lien on property assessed.....	574	410
Treasurer to give additional bond.....	575	411
May condemn property.....	576	411
Commissioners may enter on lands.....	577	412
Commissioners to repair and improve levees.....	578	412
Commissioners to let contracts, how.....	579	412
Bids for construction, how submitted.....	580	412
Contracts approved and filed, how.....	581	413
Contractor shall give bond.....	582	413
Engineer and commissioners to supervise work on.....	583	413
Shall have right of way across railroads.....	584	413
Commissioners to inspect work on, warrants.....	585	414
Commissioners may make partial payments.....	586	414
Commissioners, annual report of.....	587	414
Commissioners may employ attorneys.....	588	415
Commissioners may acquire property.....	589	415
Commissioners may lease or rent lands.....	590	415
Commissioners may let use of levees.....	591	415
Commissioners may dispose of surplus material.....	592	416
Commissioners may sell lands, how.....	593	416
INDEBTEDNESS—		
No reduction in assessments, on account of.....	279	223
INDIGENT CONFEDERATE SOLDIERS—(See <i>Confederate Soldiers</i> .)		
INHABITANTS—		
Towns of five thousand.....	23	44
INHERITANCE—		
Tax lien superior to, when.....	388	286
43—TL		

	SEC.	PAGE.
INHERITANCE TAXES—		
To be levied (Chap. XII).....		197
What property subject to.....	244	197
Property passing into two or more estates, taxes on.....	245	199
Property bequeathed to executors or trustees.....	246	199
Inventory of property subject to, to be filed when.....	247	199
Duty of Comptroller to contract for collection.....	248	199
Ruling of Attorney General declaring invalid contracts (note)	248	199
Appraisers appointed, notice to be given.....	249	200
County judge to calculate.....	250	201
Property withheld from beneficiaries until paid.....	251	201
Charge on real estate, when.....	252	201
To be paid within 30 days to collector.....	253	202
Duty of collector to sue for, when.....	254	202
Duty of collector to pay to State Treasurer.....	255	202
To be deposited to credit of general fund.....	256	202
May be refunded, when.....	257	202
Final accounting not to be allowed until paid.....	258	203
Appointment of administrator dispensed with.....	259	203
INJUNCTIONS—		
Against unlawful sale of liquor, may be obtained.....	226	192
Procedure in suits, as in other cases.....	227	193
Against soliciting orders in dry territory.....	235	194
Against use of certain premises for gaming.....	237	195
Who may institute.....	239	195
Proceedings in certain cases.....	240	196
INSURANCE ADJUSTERS—		
From each, agent, etc., occupation tax.....	55	78
INSURANCE COMPANIES—		
Gross receipt tax on fire and marine.....	109	105
Required to render property for taxes.....	688	455
On whom process shall be served in suits against.....	689	456
Certain, to deposit securities with State Treasurer.....	690	456
Each life, required to make report.....	691	457
Insurance Commissioner to certify amount of tax due from each	692	458
No occupation tax on, other than imposed herein.....	693	459
Certificate accepted subject to laws in force.....	694	459
Withdrawing, how re-admitted to State.....	695	460
Failure to renew certificate of authority, may still main- tain agent	696	460
May loan money on complying with laws relating to loan companies	697	460
Value of property, how arrived at.....	698	460
Licensed agents to report—Shall keep record.....	699	461
Gross receipts tax on fire.....	700	461
Before forming association must pay all taxes.....	701	461

INSURANCE COMPANIES—(Cont'd.)	SEC.	PAGE.
Certain, to pay on gross receipts—sworn statement required	702	462
Insurance Commissioner shall certify facts to State Treasurer	703	462
Gross receipts tax—How regulated.....	704	463
Shall constitute all taxes due.....	705	463
Application to accompany each insurance policy.....	706	464
How may be incorporated.....	707	464
Salaries and expenses of Industrial Accident Board to be paid by State.....	708	465
Mutual, how incorporated.....	709	465
Fees to be paid to Commissioner of Insurance and Banking	710	465
Annual occupation tax on each company.....	711	466
How "doing business" is defined by law.....	712	466
Occupation tax to be paid by certain persons, etc.....	713	466
Tax on persons acting as general adjusters, etc.....	714	466
Fraternal benefit societies exempt from certain taxes.....	715	467
 INTANGIBLE ASSETS—		
State Tax Board to calculate (Chap. VII).....		129
Of certain corporations.....	153	132
Statement of, to be furnished.....	154	132
What statements of, shall contain.....	155	132
Tax Board may demand additional statement of.....	156	134
Duties and powers of Tax Board relating to.....	158	134
Method of arriving at value of.....	159	135
Of unincorporated companies and individuals.....	160	137
Board to certify amount of, to assessors.....	161	137
Penalty for failure to make statement of.....	163	139
Persons paying relieved of other taxes.....	165	139
 INTEREST—		
On bonded debt—Power of Legislature.....	19	36
 INTERURBANS—		
Gross receipts, taxes on.....	111	108
 INTOXICATING LIQUORS—(See <i>Liquors, Liquor Dealers and Licenses.</i>)		
Sale of, may be enjoined, when.....	230	193
Injunction against sale of, without license.....	236	196
 INVENTORY—		
Of property subject to inheritance tax.....	247	199
 INVESTMENT—		
Of sinking funds by school trustees.....	527	387
 ITINERANTS—		
Merchants, to pay occupation tax.....	36	73
Medicine vendors taxed.....	37	74
Physicians, occupation tax on.....	41	76

JUDGMENTS—	SEC.	PAGE.
On bonds of loan brokers.....	84	89
To be collected out of bonds of loan brokers.....	85	89
Not collectable, may be sold.....	848	527
JURY FEES—		
To be reported by county clerks.....	843	526
JUSTICES OF PEACE—		
Fines and judgments to be charged to them.....	845	526
LANDS—(See <i>Unrendered Land</i> , etc.)		
Leasehold interest in public, how rendered.....	285	227
Taxes on, of non-residents in unorganized counties.....	418	307
Assessing and collecting taxes on unrendered (Chap. XVI)		312
Sale of unrendered, how made by tax collector.....	432	314
Unrendered, to be advertised before sale, etc.....	433	314
All within the State considered real property.....	444	319
To be platted and numbered in certain counties.....	461	346
Evidence of title to redeem.....	462	347
List of, omitted from tax rolls, to be made.....	464	348
LEASEHOLD—		
Interest in public lands, how rendered.....	285	227
LEGISLATURE—		
Shall have power to release taxes when.....	10	29
Shall make provisions for redemption of lands.....	13	32
To tax other objects.....	17	37
Duty of, to equalize taxes.....	18	37
Limitation on power to levy taxes.....	19	38
Power to levy tax for Confederate Soldiers.....	20	40
Donations by, for seawalls.....	26	62
May provide for seizure and sale for taxes.....	15	35
LEVEES—		
Improvement districts and seawalls, taxes relating to (Chap. XXI)		395
LEVY OF TAXES—		
By general law for public purposes.....	3	17
Power of Legislature to, limited.....	19	38
Of special school taxes.....	28	63
Poll taxes, collected annually.....	34	69
On occupations, and their collection.....	35	72
For county purposes—Power to levy.....	89	91
Commissioners' courts may levy license in addition.....	207	180
On property inherited.....	245	199
LICENSES—		
Payable in current money only.....	22	43
May be transferred on books of officer issuing.....	96	97
Purchaser of, may pursue occupation, when.....	97	98
Cost of, of liquor dealers.....	166	141
No person to sell liquor without.....	169	144

LICENSES—(Cont'd.)

	SEC.	PAGE.
Malt liquor not to be sold without.....	170	144
Wine growers exempt from obtaining.....	171	145
Liquor, to be forfeited for violation of law.....	173	146
Applications for permit to obtain.....	174	147
Comptroller given power to revoke.....	175	151
Proceedings to revoke, how instituted.....	176	152
Right of appeal from revocation of.....	182	155
Number to be issued, how determined.....	184	156
Petition to obtain.....	185	158
Not to be granted for saloons near church.....	186	159
Judge to act on petition for liquor.....	187	159
Duty of clerk to issue, when.....	189	160
Unearned portion of, returned when.....	192	175
Clerk to certify forfeiture.....	194	175
Not to issue to person, when.....	196	176
Not to be granted to certain persons.....	197	176
Required to be posted.....	199	177
List of, to be delivered to grand jury.....	200	177
Requisites for to issuance of, in dry territory.....	208	180
To issue in dry territory when; evidence of.....	209	181
To issue for one year, shall designate place.....	210	182
In dry territory, shall be posted.....	211	182
County clerk to report applications for.....	212	182
Bond shall be given before issuance of.....	214	182
Application for and procedure for cold storage.....	220	189
County clerk to report cold storage license.....	221	190
Injunction against sale of liquor without.....	236	195
Of physicians	893	541
Of embalmers	902	544
For hunters	908	545
For plumbers	902	546

LIEN FOR TAXES—

Constitutional provision creating.....	15	35
On all property.....	284	226
Superior to assignment, attachment, etc.....	388	286
Delinquent, to remain on lands.....	445	319
Suits to foreclose, proceedings in.....	450	326

LIGHTNING ROD AGENTS—

Occupation tax to be paid by.....	56	79
-----------------------------------	----	----

LIMITATIONS—

Constitutional provision relating to.....	1	1
On rate of taxation.....	9	20
On Legislature to levy taxes.....	19	38

LISTED—

Delinquent lands to be, by collector.....	446	321
Lands omitted from tax rolls to be.....	464	348
Property to be, by Comptroller, when.....	471	352

LIVE STOCK—		SEC.	PAGE.
To be rendered, where and how.....		268	214
LIQUORS—(See <i>Liquor Dealers and Licenses</i> .)			
Wholesale dealers to pay gross receipt tax.....	112		109
Dealers in, to pay taxes (Chap. VIII).....			141
Selling, on prescription (Chap. IX).....	206		179
License to sell, in dry territory.....	208		180
C. O. D. shipments of.....	222		190
Sale of, may be enjoined when.....	230		193
LIQUOR DEALERS—			
Chapter VIII, relating to.....			141
Amount of tax to be collected from.....	166		141
Definition of retail.....	167		144
Definition of retail malt.....	168		144
Must have license to sell.....	169		144
Malt, not to be sold without license.....	170		144
Wine growers exempt from tax on.....	171		145
Not to carry on business at more than one place.....	172		145
License forfeited for violation of law.....	173		146
Application of, for permit, requisites.....	174		147
Comptroller may revoke license of.....	175		151
Proceedings to revoke license of, how instituted.....	176		152
Duty of officer taking depositions to revoke license of.....	177		153
Right of appeal of, to district court.....	182		155
Number of permits to be issued to, how determined.....	184		156
Petition of, for license, requisites of.....	185		158
Not to carry on business near church.....	186		159
Duty of county judge to act on petition of.....	187		159
Duty of clerk to issue license to, when.....	189		160
Regulating hours for closing of places of.....	190		160
Requisites of bonds of.....	191		161
Unearned portion of license of, in case of death.....	192		175
Forfeiture of license of, to be certified by clerk.....	194		175
Act of servant of, act of master.....	195		176
No license to be issued to one whose license has been re- voked until	196		176
License as, not to be granted to certain persons.....	197		176
Law relating to, not to conflict with local option law.....	198		177
License of, to be posted.....	199		177
List of license of, to be furnished grand jury.....	200		177
Law regulating, to be charged to grand jury.....	201		177
May dispose of stock in bulk, when.....	203		177
Law relating to, constitutionality of.....	205		178
License not to issue until bond given in certain instances..	214		182
LOAN BROKERS—			
Definition of	77		87
Shall give bond	78		87
Bond of, to be filed and recorded.....	79		88
Bond for each place of business.....	80		88

LOAN BROKERS—(Cont'd.)	SEC.	PAGE.
Shall keep record of all loans.....	81	88
Records of, to be open for inspection.....	82	88
Shall file power of attorney.....	83	89
Judgment on bonds.....	84	89
Judgment to be collected.....	85	89
Failure to comply with law.....	86	90
Mortgages, how executed.....	87	90
Annual tax on.....	88	90
Compromises for usury are void.....	88a	90
 LOCAL OPTION—		
Tax on liquors sold on prescription in, territory.....	206	179
Bond to be given for sale on prescription in, territory.....	214	182
Tax on persons soliciting orders in dry territory.....	218	187
Sale of liquors in such territory may be enjoined.....	230	193
Injunction against soliciting orders in such districts.....	235	194
 MAJORITY VOTE—		
Required to amend city charters.....	23	45
 MANUFACTURERS—		
Rendition of property by.....	265	212
Required to pay registry fees.....	819	518
 MEDICINES—		
Patent, traveling vendors of, taxed.....	37	74
Shows, managers of, tax to be paid by.....	73	82
 MENAGERIES—		
Side shows, etc., tax on.....	50	78
 MERCHANTS—		
Itinerant, to pay occupation tax.....	36	73
 MERRY-GO-ROUND—		
Occupation tax on.....	45	76
 METHOD—		
Of making appropriations.....	6	18
Of assessing railroad property, and where.....	8	20
Followed by board in arriving at tax rate.....	31	67
Of collecting occupation taxes (Chap. IV).....		91
Of arriving at value of intangible assets.....	159	135
 MILL PRODUCTS—(See Feed Stuffs.)		
Chapter relating to taxes on.....	716-727	468
 MINOR—		
Penalty for selling liquor to.....	175	151
Rendition of property by.....	265	212

MIXED PROPERTY—	SEC.	PAGE.
All, to be taxed.....	260	240
MONEY—		
U. S. paper, taxable.....	287	230
To be assessed, how.....	288	230
Tax collector to account for payment of.....	419	307
How, when collected, shall be accounted for.....	420	307
What, shall constitute school funds.....	881	535
MONEY LENDERS—(See <i>Loan Brokers.</i>)		
Occupation tax on.....	63	80
MORTGAGES—		
To loan brokers, how executed.....	87	90
MOTION PICTURE MACHINES—		
Occupation taxes on.....	71	82
MUNICIPAL TAXES—		
To pay subsidies, etc., how applied.....	477	353
To be collected by city officers.....	478	354
Bond of officer collecting.....	479	354
May be paid in what.....	480	354
To be paid over every month.....	481	354
If insufficient, additional levy to be made.....	482	354
NAVIGATION DISTRICTS—		
How navigation districts may be established.....	603	421
Application to commissioners' court to contain what; notice given	604	421
Navigation boards in cities and towns with special charters	605	422
Notice of hearing before navigation board.....	606	422
Proceedings to be recorded by county clerk.....	607	422
Duties imposed without compensation.....	608	422
Objections and contest on hearing of petition.....	609	422
Finding of board at hearing of petition.....	610	423
Navigation district election; form of ballot.....	611	424
Notice of navigation district election.....	612	424
Navigation district election to conform to general election law	613	425
Qualification of electors; form of oath before voting.....	614	425
Commissioners' court to canvass returns; declare results....	615	425
Navigation commissioners', how appointed; qualifications; Compensation, term of office.....	616	426
Oath of commissioners of navigation districts.....	617	427
Bond of navigation commissioners.....	618	427
Organization of navigation district board quorum.....	619	427
Navigation districts engineers appointed; duties; compensa- tion; U. S. Government aid; Proceedings in case of.....	620	427
Commissioners' court to issue bonds, when and how.....	621	428
Navigation bonds, when issued; assessments, limitation of	622	429

NAVIGATION DISTRICTS—(Cont'd.)

	SEC.	PAGE.
Navigation bonds, form of, denominations, term.....	623	429
Attorney General to certify to validity of navigation bonds	624	429
Certificate of Attorney General; effect of.....	625	430
Record of bonds to be kept; duties and fees of clerk.....	626	430
Navigation bonds sold, how; limitations on sale.....	627	431
Chairman of navigation board to give bond.....	628	431
Cost of proceedings to establish district; how provided....	629	431
Duty of commissioners' court to levy tax, when.....	630	432
Available sinking fund, how invested.....	631	432
Navigation tax proceedings; compensation of assessor.....	632	432
Compensation of tax collector; additional bond required..	633	433
Duty of tax collector to make list of delinquents; tax sales	634	434
Duty of county treasurer to open account with navigation district	635	434
County treasurer to execute additional bond.....	636	434
Right of eminent domain conferred on districts.....	637	435
Board may acquire property for navigation purposes.....	638	435
Navigation commissioners may enter lands to make surveys	639	435
Work, how done; contracts, how let when United States Government fails to act.....	640	436
Bids for work, how awarded.....	641	436
All contracts to be in writing and filed.....	642	436
Navigation district contractor's bond.....	643	436
Work supervised by navigation engineer; his report.....	644	437
Navigation district commissioners to inspect work; payment, how made.....	645	437
Navigation district commissioner's report of work to contain what	646	437
Navigation district commissioners may employ assistant engineers and legal counsel.....	647	437
Unlawful for officers to be interested in contracts.....	648	438
Navigation district commission may sue and be sued.....	649	438

NEW COUNTIES—

Persons may be employed to transcribe records of.....	483	355
Compensation of collectors of.....	486	356
Compensation for transcribing rolls of.....	487	357

NINE AND TEN PIN ALLEYS—

Occupation tax on.....	44	75
------------------------	----	----

NON-INTOXICATING MALT LIQUORS—

Tax on dealers in (Chap. X).....	216	186
Applications for license to sell, to be paid how.....	216	186
County clerk to report license issued.....	217	187

NON-RESIDENTS—

Taxes on lands of, in unorganized counties.....	418	307
Proceedings against, for collection of back taxes.....	459	341

NOTICE—

	SEC.	PAGE.
To corporations by Secretary of State.....	138	124
To pay over money, how given.....	421	308
To be posted by tax assessor, when.....	472	352
To all delinquent taxpayers to be sent out, when.....	488	357
How, to delinquents, shall be made out.....	489	358

NURSERIES—

Rendition of property by.....	265	212
-------------------------------	-----	-----

OATHS—

Members of State Tax Board to administer.....	151	131
Definition of	263	210
Persons shall list property for taxes under.....	273	216
Statement by railroads under.....	281	224
And bonds of tax assessors.....	291	232
Tax assessors empowered to administer.....	297	234
To be administered to taxpayers by assessors.....	298	234
When and how taxpayers may make.....	299	234
Penalty on assessor for failure to attest.....	300	235
Required of all taxpayers.....	302	236
To be taken by tax assessors.....	329	256
Of members of board of equalization.....	330	257
And bond of tax collector, requisites.....	365	271
Collector may administer to persons paying poll taxes.....	510	376

OFFENSES—

Officer of the government fraudulently taking or misapplying public money.....	971	574
What included in the term of "misapplication" of public money	972	574
Receiving or concealing misapplied public money.....	973	575
"Officer of the government" defined.....	974	575
State Treasurer improperly receiving private funds.....	975	576
Diverting special funds	976	576
Misapplication of county or city funds.....	977	576
Fraudulently receiving misapplied county or city funds....	978	578
Officers failing to pay over money.....	979	578
Venue of certain prosecutions.....	980	578
Payments of moneys and accounting of same.....	981	578
Duty of officers to pay over money, when.....	982	579
Persons or corporation liable for franchise tax failing to make report	983	579
Charter or right to do business of corporations forfeited..	984	579
Right of officers to do business in corporate name ceases, when	984	579
Taxpayers to make oath; punishment for false affidavit....	985	580
Failure of collector to collect occupation taxes.....	986	580
Failure of dealer to post occupation license.....	987	581
Penalty for violating preceding article.....	988	581
Officer purchasing property sold for taxes.....	989	581
Tax collector failing to perform certain duties.....	990	582

OFFENSES—(Cont'd.)	SEC.	PAGE.
Tax collector issuing unauthorized tax receipt.....	991	582
Clerk failing to make certain certificates.....	992	582
Corporations liable for occupation tax failing to make report	993	583
Amounts allowed officers may be retained.....	994	583
State or county not responsible for fees or compensation, when	994	583
Officers to make sworn statements of fees collected, inform party for whom collected and pay over same.....	994	583
Officers to make quarterly statements of moneys in their hands uncalled for	995	584
Moneys not called for to be paid over to county treasurer..	996	585
Penalty for violating three preceding articles.....	997	585
Collector extorting excessive taxes, etc.....	998	585
Tax officer exacting usury.....	999	585
Tax officer assuming taxes for reward.....	1000	585
Collector failing to forward transcript.....	1001	586
Collector issuing occupation tax receipt without affidavit..	1002	586
Wrong licenses no protection.....	1003	586
Obstruction of tax collections.....	1004	586
Pursuing taxable occupation without license.....	1005	586
Plumber conducting business without license; penalty for..	1006	586
Penalty not exclusive.....	1007	586
Payment of tax bars prosecution.....	1008	586
Refusal to render or swear to assessment.....	1009	588
Failure of president, etc., of bank, to furnish statement to tax assessor.....	1010	588
Definition of "money and notes".....	1011	589
Pretended sale or transfer of coin, notes or bonds.....	1012	589
Penalty for violation of Article 137.....	1013	589

OCULISTS—

Itinerant, occupation tax on.....	41	75
-----------------------------------	----	----

OMISSION—

Of property from tax rolls, lists to be made.....	463	348
---	-----	-----

OMITTED—

Property to be assessed how.....	464	348
List of property to be advertised.....	466	349
List of property to operate as lien on lands.....	465	349

OCCUPATION TAXES—

Shall be equal and uniform.....	2	11
To be levied and collected.....	35	72
From itinerant merchants.....	36	73
From traveling vendors of patent medicines.....	37	74
From auctioneers	38	75
From ship brokers or ship agents.....	39	75
From persons who sell on commission.....	40	75
From itinerant physicians, oculists, etc.....	41	75

OCCUPATION TAXES—(Cont'd.)

	SEC.	PAGE
From persons keeping shooting gallery.....	42	75
From every billiard or pool table used for profit.....	43	75
From nine and ten pin alleys used for profit.....	44	75
From flying jenny or merry-go-round.....	45	76
From every foot or other peddler.....	46	76
From peddlers of clocks, farm implements, stoves, etc.....	47	76
From theaters and dramatic representation.....	48	77
From every circus; defining same.....	49	77
From menageries or side shows.....	50	78
From acrobatic exhibitions.....	51	78
From sleight of hand exhibitions.....	52	78
From wax-works, etc., charging fee.....	53	78
From concerts, where fee charged.....	54	78
From insurance adjusters, agents, etc.....	55	78
From lightning rod agents or dealers.....	56	79
From cotton brokers, factors, and commission merchants.....	57	79
From pawnbrokers.....	58	79
From sewing machine agents and dealers.....	59	79
From gas manufacturers.....	60	80
From electric light companies.....	61	80
From water works companies.....	62	80
From certain money lenders.....	63	80
From credit associations or reporting agencies.....	64	80
From owners of skating rinks.....	65	81
From managers of ball parks.....	66	81
From wholesale dealers in ice.....	67	81
From owners or managers of race tracks.....	68	81
From every street car company.....	69	81
From owners of phonographic exhibitions.....	70	82
From owners of motion picture machines.....	71	82
From stereoscopic shows.....	72	82
From owners or managers of medicine shows.....	73	82
From brokers or commission merchants.....	74	82
From dealers in cigarettes.....	75	83
From dealers in cannon crackers or toy pistols.....	76	87
Annual tax on loan brokers.....	88	90
To be paid before business begins.....	93	96
Subject to be taxed (Chap. III).....	35-88a	72-90
Taxes on, to be paid before business begins.....	93	96
Rights of purchasers of unexpired licenses.....	97	98
Receipts for, to be furnished by Comptroller.....	94	96
Based on "gross receipts" (Chap. V).....		100
On telegraph companies.....	102	101
Gas companies to pay on gross receipts.....	103	102
On handling C. O. D. liquors.....	222	190

OIL COMPANIES—

Gross receipts tax to be paid by.....	110	107
Other taxes to be paid by.....	116	112

OPINION—

As to interest on back taxes (see note) after.....	492	360
--	-----	-----

INDEX.

645

ORDERS—	SEC.	PAGE.
Tax on persons soliciting, in dry territory.....	218	187
OWNER—(See <i>Unknown Owners</i> .)		
Rendition of property by.....	265	212
Assessment of property in name of.....	283	226
Of property, relief for, when.....	406	297
Or his agent may redeem, when.....	410	304
Lands of, shall be sold if he fails to redeem.....	411	305
May redeem by paying costs, etc.....	412	305
May redeem lands sold by paying double, when.....	457	339
May redeem lands sold to State, when and how.....	458	340
PARKS—		
Cities may levy special taxes for.....	.....	606
PARTIES—		
Who may be made defendants in injunctions.....	231	194
And proceedings in injunctions.....	238	195
PATENT MEDICINES—		
Vendors, traveling, taxed.....	37	74
PAYMENT—		
Of taxes not to be made twice.....	269	215
PAWNBROKERS—		
Annual tax to be paid by.....	58	79
PEDDLERS—		
Occupation tax on.....	46	76
Clocks, implements, stoves, tax on.....	47	76
PENALTIES—(See <i>Offenses</i> .)		
Of corporations for failure to make report in thirty days..	119	114
Of corporations for failure to pay tax.....	120	114
May be recovered from corporations by Attorney General..	121	114
Of corporations for failure to report.....	132	121
On failure of corporations to obey subpoena of State Tax Board	152	131
For failure to report to State Tax Board.....	163	139
For failure to pay C. O. D. shipment taxes.....	223	191
For officers violating tax laws, etc.....	.....	573
PENSIONS—		
Exempt from taxation.....	970	571
PERMIT—		
Not to be granted until tax is paid.....	122	114
Of corporations may be surrendered.....	139	125
How number of liquor dealers, determined.....	184	156
Application for, of liquor dealers.....	174	147

PERSON—	SEC.	PAGE
Definition of	263	210
PERSONAL PROPERTY—		
All, subject to be taxed.....	260	204
Includes what	261	207
Assessment of, by banker or broker.....	277	219
Duty of county and district attorneys to sue for taxes on..	422	308
PETITION—		
For liquor dealers' license, requisites of.....	185	158
PHYSICIANS—		
Itinerant, occupation tax on.....	41	75
License fees of.....	893	541
District clerks to keep register.....	893	541
Reciprocity allowed by Board of Medical Examiners.....	894	541
Applicants for license to practice medicine to pass exam- ination	895	541
Disposition of fees of Medical Board.....	896	543
Definitions of physician and surgeon.....	897	543
PHONOGRAPHIC EXHIBITIONS—		
Occupation tax on.....	70	82
PIPE LINE—		
Taxed, to make reports each quarter.....	106	102
Expert to be appointed by Railroad Commission.....	107	104
PISTOLS—		
Wholesale and retail dealers taxed.....	113	110
PLATS—		
Of lands to be made and numbered in certain counties.....	461	346
PLACE—		
For use of liquor license to be designated.....	210	182
Property to be rendered in only one.....	267	213
PLUMBERS—		
License fee of.....	912	546
Board to examine plumbers and plumbing inspectors;		
Licenses and register of.....	912	546
Licenses not to issue for more than one year, renewable, etc.	913	547
License fees; disposition of.....	914	547
Members of the board to receive no compensation.....	915	547
Licenses not transferable.....	916	547
Examination and fee not required of same person but once	917	547
No license until examination passed.....	918	547
Every, firm to have one member a practical plumber.....	919	547

POLL TAXES—

	SEC.	PAGE.
To be levied and collected annually.....	34	69
To be collected from whom.....	34	69
Collection of, chapter relating to, payment, etc. (Chap. XVIII)		365
Constitutional provisions and qualification of voters.....	493	365
Collected from whom, when paid and receipt for.....	494	367
Method of paying.....	495	368
Method of paying in cities of ten thousand and over.....	496	368
Receipt for, not to be delivered to agent, etc.....	497	369
Candidate shall not pay, for another person, etc.....	498	369
No person to give money to another for purpose of paying..	499	370
No person to keep receipt of another, except, etc.....	500	370
Receipt for, shall show what.....	501	370
Form of receipt for.....	502	371
Receipt for, in case of removal to another ward or city, etc.	503	371
Receipt for, in case of removal to another county or precinct	504	372
Exemption certificate in lieu of, when.....	505	373
Exemption certificate in lieu of, for minor, when.....	506	374
Receipt for, in unorganized counties.....	507	374
Books of receipts for, to be furnished to collector, how.....	508	375
Deputy collector of, to be appointed, when.....	509	375
Collector of may administer oaths, etc.....	510	376
Proof of residence of person offering to pay.....	511	376
False swearing in regard to, to be reported to grand jury..	512	376
List of payers of, to be furnished to election board.....	513	376
Duplicates of receipts for, to be kept by collector.....	514	377
Statements of receipts for, to be made by collector.....	515	378
Qualifications for voting in cities of 10,000, etc.....	516	378
Who exempt from payment of.....	953	563
Who not required to pay.....	954	563

POSTING—

Of licenses for dry territory.....	211	182
Of notice by tax assessor, when.....	472	352

POWERS—

Of State Tax Board.....	158	134
Of Comptroller to revoke liquor licenses.....	175	151
Of cities and towns to enjoin illegal sale of liquors (Chap. XI)		192
Of cities to restrain illegal liquor sales, etc.....	241	196

POWER OF ATTORNEY—

To be filed by loan brokers.....	83	88
----------------------------------	----	----

POWER OF COMMISSIONERS' COURTS—

To levy taxes for certain county purposes.....	89	91
To fill certain vacancies.....	899	543

PREScription—	Sec.	Page.
Selling liquor on, in dry territory.....	206	179
Applicants for license to sell liquor on, to be reported to Revenue Agent	212	182
PRIMARY ELECTIONS—		
Bulings of Attorney General relating to (note).....	516	379
Difference in rules governing general elections (note).....	516	379
PROCEEDINGS—		
In certain injunction cases.....	240	196
Against delinquents, unknown or non-residents.....	459	341
Against delinquents by cities and towns.....	460	345
PROOF—		
Of payment of taxes, how made.....	898	543
PROCEDURE—		
In injunctions against sale of liquor.....	227	193
Same as in other cases, as to injunctions.....	233	194
PROPERTY—		
Certain, to be exempt from taxation.....	27	62
Amount of, to be certified to Comptroller.....	30	66
Intangible assets to be taxed as other.....	153	132
Subject to inheritance tax.....	244	197
Passing to two or more estates subject to inheritance tax..	245	199
What, subject to taxation and method of rendering (Chap. XIII)		204
All, real, personal, or mixed, taxed.....	260	204
What real, includes.....	261	206
Personal, what it includes.....	262	207
When, to be rendered for taxes.....	264	211
Manner of rendering for taxes and by whom.....	265	212
Where shall, be rendered for taxes.....	266	213
Persons listing, as agents for others.....	272	216
Shall be listed under oath.....	273	216
Assessment of personal, by banker or broker.....	277	219
Assessment of, by railroads.....	280	224
Assessment of corporate.....	282	225
All taxes a lien upon.....	284	226
How shall, be valued for taxes.....	286	223
How assessed for taxes, generally (Chap. XIV).....		231
All liable for taxes.....	391	282
Sales of, for taxes, how made.....	392	289
Duty of collector, if property insufficient.....	393	289
Sales of real, when made for taxes.....	394	289
Advertisement of real, for sale.....	395	289
Relating to sales of, for taxes.....	396-397	290
List made of, when omitted from tax rolls.....	463	348
Omitted from rolls, to be assessed, how.....	464	348
List of, omitted from rolls, to operate as lien on.....	465	349
When omitted from rolls to be advertised.....	466	349

INDEX.

649

PROPERTY, LANDED OR REAL—(See <i>Property</i>.)	SEC.	PAGE.
Lien created on, by annual assessment.....	15	35
All, to be taxed.....	260	204
PROSECUTIONS—		
By district and county attorneys in injunctions.....	233	194
PUBLIC BUILDINGS—		
Erection and repair of; Constitution.....	19	38
PUBLIC CALAMITY—		
Taxes may be released in case of.....	10	29
PUBLIC PURPOSES—		
Taxes for, to be levied by general law.....	3	17
PUBLICATION—		
Of delinquent tax record, how made.....	470	351
QUALIFICATIONS—		
Of voters, constitutional provisions, etc.....	493	365
For voting in cities of 10,000 and over, etc.....	516	378
QUARANTINE—		
Enforcement of, provision of Constitution.....	19	39
QUARTERLY REPORTS—		
To be made to Comptroller by tax collector.....	379	279
RACE TRACKS—		
Occupation tax on.....	68	81
RAILROADS—		
Property subject to city taxes.....	5	18
Method of assessing property of.....	8	20
Intangible assets of.....	153	132
Telegraphs, etc., how listed.....	271	216
Assessment of property by.....	280	224
To return sworn statements.....	281	224
Municipal taxes in aid of, etc.....	477	353
RAILROAD COMMISSION—		
Pipe line expert to be appointed by.....	107	104
RATE OF TAXATION—		
Limitation on.....	9	20
How calculated	29	66
How arrived at by Tax Board.....	31	67
Comptroller to certify to assessors.....	32	68
For county purposes to be calculated.....	33	68

	SEC.	PAGE.
REAL ESTATE—		
Inheritance taxes a charge on.....	252	201
All, subject to taxation.....	260	204
What included as	261	206
Manner of rendering.....	265	212
How rendered for taxes.....	276	219
All subject to taxation.....	444	319
Delinquent taxes to remain a lien on all.....	445	319
Delinquent for taxes to be listed in delinquent tax records	446	321
REAL PROPERTY—		
For the purposes of taxation, includes what.....	444	318
RECEIPTS—(See <i>Gross Receipts.</i>)		
For occupation tax furnished by Comptroller.....	94	96
REDEMPTION—		
Of land sold for taxes by collector.....	402	295
Of land within two years, when.....	403	296
From private purchasers	404	296
Collector to issue certificate of, when.....	408	298
By owner or his agent, when.....	410	304
Of land by owner before sale.....	456	338
Of land by owner by paying double, when.....	457	339
Owners may make, from State, when and how.....	458	340
Evidence of title necessary for, of lands.....	462	347
REDUCTION—		
Of assessments when, power of commissioners' courts.....	467	349
RECEIVER—		
Rendition of property by.....	265	212
RECORD—		
Tax receipts may be placed on.....	375	278
Commissioners to furnish for clerk.....	378	279
RECORDS—		
Of loan brokers to be open for inspection.....	82	88
Of loan brokers to be kept of loans made.....	81	88
REDUCTION—		
None to be allowed in assessments on account of indebtedness	297	223
REFRIGERATOR COMPANIES—		
Gross receipt taxes on.....	105	103
REFUNDING BONDS—		
May be issued for free school purposes, etc.....	528	387

INDEX.

651

REFUND—	SEC.	PAGE.
Of inheritance taxes, when made.....	257	202
RELEASE OF TAXES—		
Not to be made except when.....	10	29
REMEDIES—		
Injunctions, cumulative of other actions.....	229	193
RENDITION—		
Of property, when to be made.....	264	211
Manner of	265	212
Of property by owner.....	265	212
Of property by agent.....	265	212
Of property by minor.....	265	212
Of property by wife.....	265	212
Of property by idiot.....	265	212
Of property by cestui que trust.....	265	212
Of property by receiver.....	265	212
Of property by corporation.....	265	212
Of property by co-partnership.....	265	212
Of property by manufacturer.....	265	212
Of property by nurseries.....	265	212
Where property shall be offered for.....	266	213
Of property in one county.....	267	213
Of live stock, where and how.....	268	214
Of steamboats and vessels for taxes.....	270	215
Of real estate for taxes, how made.....	276	219
Of leasehold interest in lands, how rendered.....	285	227
REPEAL OF LAWS—		
Relating to franchise tax of corporations.....	135	122
REPORTS—		
By express companies annually.....	101	100
Telegraph companies quarterly, all business.....	102	101
Gas, electric light, power and water works companies to report each quarter.....	103	102
By collecting and commercial agencies, quarterly.....	104	102
By pipe lines each quarter.....	106	103
Of stock and refrigerator companies.....	105	103
Of text-book publishers.....	114	111
Of telephone companies	115	111
Of pistol dealers of gross receipts.....	113	110
Of wholesale and retail liquor dealers.....	112	109
Of interurban and electric railways.....	111	108
Of wholesale oil dealers.....	110	107
Of fire and marine insurance companies.....	109	105
Of sleeping car companies.....	108	105
Additional, by pipe line companies.....	107	104
State Comptroller may require additional.....	124	115
Of corporations as basis of franchise taxes.....	131	121

REPORTS—(Cont'd.)	SEC.	PAGE.
Of corporations to be privileged.....	133	121
Of corporations, made by what officers.....	134	121
Of corporations to State Tax Board (Chap. VII).....	.....	129
County clerk to make, of cold storage licenses.....	221	190
Of tax collector not to be approved, unless, etc.....	381	282
By tax collector to Comptroller made quarterly.....	379	279
Of sales of unrendered lands by collector.....	439	316
To Comptroller of unsold unrendered lands assessed.....	443	317
Of various county officers relating to finances (Chap. XXVIII) .....	.....	523
REPUDIATION—		
General, admissible as evidence, when.....	234	194
RESIDENCE—		
Proof of, in securing poll tax receipts.....	511	376
RESTRAIN—		
Cities may, illegal acts of certain persons.....	241	196
REVENUE—		
Evasion, a fraud upon public.....	301	235
REVENUE AGENT—(See <i>State Revenue Agent.</i>)		
ROLLS—		
Of tax assessor to be a warrant, when.....	370	275
ROAD DUTY—		
Who liable and who exempt from.....	959	567
SALARY—		
Of State Revenue Agent.....	100	99
Of Secretary of State Tax Board.....	148	130
SALES—		
Unlawful, of liquor may be enjoined.....	226	192
Of liquors may be enjoined when.....	230	193
Of property for taxes, how made.....	392	289
Of real property for taxes, when made.....	394	289
Advertisement of real property for.....	395	289
Prior to, lands to be posted, etc.....	396	290
May be continued from day to day.....	397	290
Of homestead not to be made, except.....	398	291
Of lands for delinquent taxes.....	399	292
By collector to be reported to commissioners.....	401	295
Of unrendered lands for taxes, lists to be made of.....	431	313
Of unrendered lands, when and how made.....	432	314
Advertisement of sales of unrendered lands.....	433	314
Of unrendered lands, how made by collector.....	434	315
Of unrendered lands may be continued, when.....	435	315
Of unrendered lands, collector to make report of.....	439	316
Of unrendered lands, collector to deduct costs of.....	442	317

SCHOOL FUNDS—(See *Available Free School Funds.*)

SCHOOL TAXES—	SEC.	PAGE.
Special, to be levied.....	28	63
Power of commissioners' court to levy special.....	517	381
Manner of levying special.....	518	381
What moneys shall constitute.....	881	535
Chapter relating to (Chapter XXIX).....		534
Additional ad valorem, for cities and towns (Chapter XXXIII)		603

SCHOOL TRUSTEES—(See *Trustees.*)

Investment of sinking funds by.....	527	387
-------------------------------------	-----	-----

SEAWALLS—

Taxes for	25	57
Legislative donations for.....	26	62
Commissioners' courts and cities may establish.....	594	416
Authorities may impose burdens for.....	595	416
Issue of bonds for, elections, voters at.....	596	417
Elections for, how conducted, etc.....	597	417
Election returns for, canvass, vote required, etc.....	598	418
Interest and sinking fund for, levy of taxes.....	599	418
Cession of State lands for, etc.....	600	418
City and county treasurers to handle funds for.....	601	419
Bonds to be issued for, in certain instances.....	602	419

SECRETARY OF STATE—

Duty of, to notify corporations before forfeiture.....	138	124
Fees that may be charged by.....	771	497

SEIZURE AND SALE—

Of property for taxes due.....	15	35
--------------------------------	----	----

SEWING MACHINE AGENTS—

Tax to be paid by.....	59	79
------------------------	----	----

SHERIFF—

To be collector in certain instances.....	16	37
Duty of, to execute deeds to purchasers of lands.....	451	331
Duties relating to county finances (Chap. XXVIII).....		522

SHOOTING GALLERY—

Occupation tax on person running.....	48	75
---------------------------------------	----	----

SHOWS—(See *Exhibition.*)

SINKING FUND—

Shall not exceed two per cent, etc.....	19	38
School trustees authorized to invest.....	527	387

SKATING RINKS—

Annual occupation tax on.....	65	81
-------------------------------	----	----

SLEEPING, PALACE AND DINING CAR COMPANIES—	SEC.	PAGE.
Taxes on	108	105
SOLICITING ORDERS—		
Injunction may be invoked against.....	235	194
SPECIAL TAXES—		
To be levied for school purposes.....	28	63
STATE AND COUNTY OFFICERS—		
Assessor to be elected under law for.....	14	34
To make certain affidavits; officers of corporations.....	129	119
Fees that may be retained by (Chap. XXVII).....	.....	497
Duties relating to county finances (Chap. XXVIII).....	.....	523
STATE DEPOSITORIES—		
Duty of State Treasurer to designate.....	728	475
Senatorial and Congressional Districts defined.....	728	475
Duty of State Treasurer to call for bids for keeping public funds	729	475
Bids how presented, etc.; shall state what; opening of bids	730	476
Selection of depository, etc.; no award in excess of paid up capital stock.....	730	476
Where no bids are submitted; duty of State Treasurer.....	731	476
Bank complying with requirements to receive deposit, etc..	732	477
State Treasurer must be satisfied that bank is solvent, and shall give bond, etc.....	733	478
Bonds to be deposited as collateral security.....	734	478
Bonds to be delivered to Treasurer.....	735	478
Additional security, when.....	735	478
Inspection; recourse on; indorsement, etc.....	735	478
To pay interest on average daily balance, etc.....	736	479
Collectors, etc., to remit to State Treasurer, etc.....	737	479
Duty of Treasurer; accounts.....	737	479
State deposits in excess of \$50,000 to be remitted to State Treasurer, etc.	738	479
Forfeiture for failure, etc., notice, suit.....	738	479
Books, etc., open to inspection, etc.....	739	480
Deposit or remittance of State funds made with or to whom, and how.....	740	480
Treasurer, Comptroller and Attorney General to make rules, etc.	741	480
State fund to be deposited in, etc., provided, etc.....	742	480
Penalty for refusal to deposit State funds, etc.....	743	480
State depository shall act how long.....	744	481
Forfeiture for what cause, etc., new depository, etc.....	744	481
Balances in, to be equalized.....	745	481
To issue to Treasurer on demand, draft, etc., on U. S. Reserve Bank, etc.	746	481
Interest on deposits to become part of general revenue.....	747	482
Other new bids to be taken when, how, etc.....	748	482
Award; collateral securities; bonds; regulations, etc.....	748	482

INDEX.

655

STATEMENTS—	SEC.	PAGE.
Certain, to be made to State Tax Board (Chap. VII).....	.....	129
Penalty for failure to make.....	163	139
Duties and powers of State Tax Board in passing upon....	158	134
Of rendition of proper, requisites of.....	274	216
Railroads to return sworn statements.....	281	224
STATE REVENUE AGENT—		
Governor may appoint; duties of.....	98	98
Shall have access to books, etc.....	99	99
Salary of	100	99
To examine books for gross receipt tax.....	125	115
STATE TAX BOARD—		
Creation of, and appointment of.....	146	129
Duties of, defined	149	130
Members of, to visit counties.....	150	130
Members may administer oaths.....	151	131
Penalties for failure to obey subpoena of.....	152	131
Certain corporations to furnish statements to.....	154	132
What statements to, shall contain.....	155	132
May demand additional statements.....	156	134
Statements to be placed before, when.....	157	134
Duties and powers of, in certain instances.....	158	134
Methods by, in arriving at facts.....	159	135
Unincorporated companies and individuals to report to.....	160	137
Shall certify intangible assets to county assessors.....	161	137
Tax assessor to comply with order of.....	162	138
Failure of companies to make statements to.....	163	139
Receivers and trustees to report to.....	164	139
STATE TREASURER—		
Duty of collector to pay inheritance taxes to, when.....	255	202
STEAMBOATS AND VESSELS—		
Where listed for taxation	270	215
STEREOSCOPIC EXHIBITIONS—		
Occupation tax on.....	72	82
STREET CAR COMPANIES—		
Occupation taxes to be paid by.....	69	81
SUITS—		
Of injunctions, by whom instituted.....	239	195
Proceedings in, to foreclose tax liens.....	450	326
Attorneys to represent State in, against delinquents.....	452	333
Duty of county and district attorneys to file, when.....	490	359
Duties relating to, mandatory.....	491	360
SUBPOENA—		
Failure to obey, of State Tax Board.....	152	151

SUNDAY—	SEC.	PAGE.
Cities may close drinking houses.....	243	196
SUPPLEMENTAL—		
Tax roll to be prepared by assessor, when.....	475	353
TAX ASSESSORS— (See <i>Assessors.</i>)		
TAXATION— (See <i>Taxes; Assessment; Collector; Assessor.</i>)		
Real property for purposes of, includes what.....	261	206
TAX COLLECTOR— (See <i>Collector of Taxes.</i>)		
To keep certain books.....	91	95
Comptroller to furnish books to, etc.....	92	96
Election and term of office of.....	362	270
Vacancy in office of, how filled.....	363	270
Sheriff to be, in certain counties.....	364	270
Bond and oath of, requisites.....	365	271
TAX COMMISSIONER—		
Appointment of	146	129
To execute bond.....	147	130
TAXES—		
Constitutional provisions relating to.....	1-28	1-65
Not to be released except.....	10	29
To be assessed in county except when.....	11	29
Lien created on lands for.....	15	35
Duty of Legislature to equalize.....	18	37
Limitations on power of Legislature to levy.....	19	38
For benefit of Confederate soldiers.....	20	40
Assessment and collection in counties, cities and towns..	24	55
Provision for seawall.....	25	57
Certain property exempt from.....	27	62
Special, to be levied for school purposes.....	28	63
Rate of, calculated how.....	29	66
Rate of, how arrived at.....	31	67
Rate of, to be certified by Comptroller.....	32	68
On occupations, to be levied and collected.....	35	72
On itinerant merchants.....	36	73
All payable in United States money.....	90	95
Gross receipt taxes in addition to all others.....	123	114
Franchise, how computed.....	127	118
Franchise, on corporations (Chap. VI).....	.....	117
Annual franchise to be paid when.....	128	119
Corporation charters forfeited for failure to pay.....	137	122
Payment of by corporations in process of liquidation.....	145	128
Of corporations on intangible assets.....	153	132
Persons paying intangible, relieved from other.....	165	139
On liquors sold by prescription in dry territory.....	206	179
On non-intoxicating malt dealers.....	215	186
On operation of cold storage, where.....	218	187

INDEX.

657

TAXES—(Cont'd.)

	SEC.	PAGE.
Amount of, for keeping cold storage.....	219	188
Penalty for failure to pay on C. O. D. shipments.....	223	191
Inheritance (Chap. XII) .....	.....	197
Inheritance, to be paid when.....	253	202
What property subject to (Chap. XIII) .....	.....	204
When property to be rendered for.....	264	211
Whose property shall be rendered for.....	26	213
Not to be paid twice.....	269	215
Steamboats and vessels, where listed for.....	270	215
How property shall be valued for.....	286	228
How property shall be assessed (Chap. XIV).....	.....	231
Method of collecting, generally (Chap. XV).....	.....	269
Election of collector of.....	362	270
Separate bond to be given for county, by collector.....	367	274
Assessment rolls warrant for collection of.....	370	275
Collector to handle all.....	371	275
When collection of, shall begin.....	372	276
Collections of, to be reported quarterly.....	379	279
Report of collections not to be approved unless.....	381	282
Delinquent, to be collected when possible.....	383	283
Non-residents may pay to Comptroller, when.....	384	283
Forced collections of, to begin when.....	385	284
Lien for, superior to assignment, etc.....	388	286
Execution for, in other counties.....	389	287
All property liable for.....	391	288
Sales of property for, how made.....	392	289
Sales of real property for taxes, when made.....	394	289
Advertisement of real property for sale for, etc.....	395	289
Method of assessing and collecting back, on unrendered lands (Chap. XVI).....	424	312
On unrendered lands, collector to enforce after sixty days	430	313
On unrendered lands, collector shall sell for, when.....	434	315
On unrendered lands, applied how.....	441	316
Poll—Chapter relating to subject in full (Chap. XVIII) 493-516	.....	365
Power of commissioners to levy special school.....	517	381
Manner of levying special school.....	518	381
Levy of bond.....	519	382
For bonds, must be levied until bonds paid.....	520	383
City school, levy and collection of (Chap. XX).....	.....	389
Relating to improvement districts, seawalls, etc. (Chap. XXI) .....	.....	396
Relating to navigation districts (Chap. XXII).....	.....	421
Relating to water improvement districts (Chap. XXIII).....	.....	440
Relating to drainage districts (Chap. XXIII).....	.....	440
On insurance companies (Chap. XXIV).....	688-715	455
For available free school purposes.....	881-892	535
Payment of, may be proven, how.....	898	543
Assessment and collection of, by cities and towns (Chap. XXX) .....	.....	548
On automobiles (Chap. XXXIII).....	.....	590
Additional school, in cities and towns (Chap. XXXIII).....	.....	603

TAX DEED—	SEC.	PAGE.
Of collector, and its requisites.....	400	292
TAX RECEIPTS—		
On occupations, to be furnished by Comptroller.....	94	96
Requisites of	374	278
May be recorded in clerk's office.....	375	278
Duty of county clerk to file and record.....	376	278
Fee of 25 cents for recording and filing.....	377	279
Commissioners' court to furnish record for.....	378	279
Of collector, notice when.....	405	297
TAX ROLLS—		
Copy to be furnished Comptroller.....	32	68
Supplemental, to be prepared by assessor, when.....	475	353
TAX SALES—		
Redemption from, by owners.....	13	32
TELEGRAPH COMPANIES—		
To report all business quarterly.....	102	101
Occupation tax on gross receipts.....	102	101
How property of, listed for taxes.....	271	216
TELEPHONE COMPANIES—		
Subject to gross receipts tax.....	115	111
TERMINAL RAILROAD COMPANIES—		
Gross receipts tax to be paid by.....	117	113
TERM OF OFFICE—		
Of tax assessor.....	289	232
Of tax collector.....	362	270
TESTIMONY—		
Fees of officers for taking, in liquor license cases.....	183	156
Persons compelled to give, in injunction cases.....	228	193
TEXT-BOOK PUBLISHERS—		
Gross receipts tax to be paid by.....	114	111
THEATERS—		
Occupation tax on.....	----	----
TOWN OR DISTRICT—		
Definition of	263	210
TITLE—		
Evidence of, to redeem lands sold for taxes.....	462	347
TRACT OR LOT—		
Definition of term.....	263	210

TRANSCRIPTS—	SEC.	PAGE.
Of unpaid assessments of new counties.....	484	356
To be verified.....	485	356
TRUSTEES—		
And receivers to report to State Tax Board.....	164	139
Of school districts may issue bonds.....	521	383
Of school district, elections to be ordered by.....	522	385
Of school districts, shall give notice of election.....	523	385
Of school districts, authorized to invest sinking funds.....	528	387
Of schools in cities and towns, to determine annual tax rate	535	391
UNEXPIRED LICENSE—		
Purchasers of, may pursue occupation, when.....	97	98
UNIFORMITY—		
Of taxation—Constitutional provisions.....	1	1
UNINCORPORATED COMPANIES—		
To make statements to State Tax Board.....	160	137
UNITED STATES MONEY—		
Taxable to State and county.....	287	230
UNIVERSITY—		
Limitations for support—Constitution.....	19	39
UNKNOWN OWNERS—		
Proceedings against, for collection of back taxes.....	459	341
UNORGANIZED COUNTIES—		
Property in, constitutional provisions.....	12	31
Payment of poll taxes by residents of.....	507	374
UNRENDERED LANDS—		
Assessment of back taxes on.....	424	312
Comptroller to prepare lists of.....	425	312
Comptroller to forward lists to board of equalization.....	426	312
Board of equalization to value.....	427	313
Three rolls to be made of.....	428	313
Collector shall give notice, etc.....	429	313
Collector to enforce collections against.....	430	313
Comptroller to list, sold to State.....	431	313
Sale of, for taxes, when to be made.....	432	314
Advertisement of sale of, and redemption of.....	433	314
How collector shall sell for taxes.....	434	315
Sale of, may be continued, how.....	435	315
Deed to, by tax collector, when and how made.....	436	315
When deed to, shall be made.....	437	316
Effect of collector's deed to, etc.....	438	316
Report of sales of, to be made.....	439	316

UNRENDERED LANDS—(Cont'd.)	Sec.	PAGE.
Proceeds of sale of, to be made to whom.....	440	316
Collections from, shall be applied, how.....	441	316
Costs of sale of, to be deducted by collector.....	442	317
Unsold tracts to be reported to Comptroller.....	443	317
To be assessed, how.....	473	352
 USURY—		
Compromises for, void.....	88a	90
 VACANCIES—		
In office of assessors, how filled.....	290	232
In office of tax collector.....	363	270
In county offices, how filled.....	900	543
 VALUES—		
Definition of	263	210
How fixed on property.....	286	228
 VENDORS—		
Traveling patent medicine, taxed.....	37	74
 VERIFICATION—		
Of certain transcripts, to be made by collector.....	485	356
 VESSELS—		
And steamboats, where listed for taxation.....	270	215
 VOTE—		
Two-thirds each House of Legislature may release taxes.....	10	29
Who qualified to (Chap. XVIII, relating to poll taxes).....	493	365
 VOTERS—(See Poll Taxes.)		
 WARRANT—		
Assessment rolls to be, when.....	370	275
Issued against county, to be attested, how.....	901	543
 WATER IMPROVEMENT DISTRICTS—		
Duty of tax collector.....	654	440
Qualification of assessor and collector of.....	655	441
Duty of assessor and collector of.....	656	442
Assessor of, to furnish list of names.....	657	442
Duty to make up rolls—Disposition of same.....	658	443
Duty of assessor and collector of district to collect taxes....	659	443
District assessor and collector to be charged with tax rolls of	660	443
Assessment to make on all property in district, when.....	661	443
Taxes due and payable November 1.....	662	444
District taxes becoming delinquent to remain a lien on lands	663	444

INDEX.

661

WATER IMPROVEMENT DISTRICTS—(Cont'd.)		SEC.	PAGE.
Duty of directors of, to cause tax collector to prepare list of delinquents	664	444	
Duty of directors to cause delinquent tax records to be prepared	665	444	
Shall publish delinquent tax record.....	666	444	
Directors to employ attorney to sue for taxes, when.....	667	445	
Who shall be made parties defendant in tax suits.....	668	445	
Sheriff's duty to execute deeds of purchasers.....	669	446	
Compensation of attorneys bringing tax suits.....	670	446	
10 per cent penalty for failure to pay taxes.....	671	446	
How owner may redeem property returned delinquent.....	672	447	
Bonds—Tax to pay interest on.....	673	447	
Depository to be selected for.....	674	447	
Duty of depository to make certain reports.....	675	447	
Duty of directors to maintain office.....	676	448	
Duty of directors as to bonds previously issued, etc.....	677	448	
Certain laws repealed—Districts heretofore established validated	678	448	
Lands relieved from taxation, when.....	679	449	
Taxes to remain in force from year to year, etc.....	680	449	
WATER USERS—			
Associations exempt from tax, when.....	956	564	
WATER WORKS COMPANIES—			
Occupation tax on.....	62	80	
WAX-WORKS—			
Exhibitions, tax on.....	53	78	
WHOLESALE DEALERS—			
In ice, occupation tax on.....	67	81	
In oil, occupation tax on.....	110	107	
In liquors, gross receipts, definition.....	112	109	
WIFE—			
Rendition of property by.....	265	212	
WINES—			
Producers of domestic, exempt from tax.....	213	182	
Growers of, exempt from obtaining license.....	171	145	
WITNESS—			
Failure of, to appear in liquor cases.....	178	153	
Other, to be summoned in liquor cases.....	180	154	
Fees to be paid for taking testimony of, in liquor cases.....	183	156	
Y. M. C. A. AND Y. W. C. A.—			
Buildings and equipments exempt from tax.....	949	561	

6 W.P. H. F.
4-4-23.

